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ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 4th September 1964

S.O. 3227.—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the order pronounced on the 29th August, 1964, by the Election Tribunal, Allahabad.

IN THE COURT OF SRI B. K. CHOUDHURI, MEMBER, ELECTION TRIBUNAL,
ALLAHABAD.

ELECTION PETITION No. 339 OF 1962.

Sri N. Dandekar, "Southlands", 177, Upper Colaba, Bombay-5.—*Petitioner.*

Versus

1. Sri Ram Ratan Gupta, "Behari Niwas", Dwarkadheesh Road, Kanpur.
2. Mahant Sri Hem Raj Gir, village Methiya Gird Gonda, P.O. Babhini Kanungo, District Gonda.
3. Sri M. K. Sinha, village Ganeshpur, P.O. Bahramghat, District Barabanki.—*Respondents.*

JUDGMENT

1. This Election Petition has been filed under section 81 of the Representation of the People Act, 1951, (hereinafter referred to as "the Act") by Narayan Dandekar, in respect of the Election to the House of the People (Lok Sabha) from No. 34 Gonda Parliamentary Constituency, District Gonda, in the State of Uttar Pradesh. The facts relevant for the purpose of the present petition lie within a narrow compass.

2. At the General Elections held in February-March, 1962, the petitioner and the respondents 1 to 3 were the four contesting candidates for election to the House of People (Lok Sabha) from 34 Gonda Parliamentary Constituency, which comprised of five Segments, namely—(i) Mankapur, (ii) Mahadeva, (iii) Gonda-North, (iv) Gonda-East, and (v) Gonda-West.

3. C. M. Nigam, District Magistrate and Collector of Gonda was the Returning Officer in respect of the said Parliamentary Constituency. The following officers

were deputed to act as Returning Officers of the Assembly constituency and also as Assistant Returning Officers of the Parliamentary constituency:—

- (i) S. R. Misra who, as the Returning Officer of the Mankapur Assembly Constituency, was also the Assistant Returning Officer of the aforesaid Parliamentary Constituency in respect of its Mankapur Assembly Segment.
- (ii) D. S. Shukla who, as the Returning Officer of the Mahadeva Assembly constituency, was also the Assistant Returning Officer of the aforesaid Parliamentary Constituency in respect of its Mahadeva Assembly Segment.
- (iii) R. P. Singh who, as the Returning Officer of the Gonda-North Assembly Constituency, was also the Assistant Returning Officer of the aforesaid Parliamentary Constituency in respect of its Gonda-North Assembly Segment.
- (iv) A. S. Misra who, as the Returning Officer of the Gonda-East and Gonda-West Assembly Constituencies, was also the Assistant Returning Officer of the aforesaid Parliamentary Constituency in respect of its Gonda-East and Gonda-West Assembly Segments.
- (v) R. B. Johri, the District Election Officer, Gonda.

The Returning Officer and the Assistant Returning Officers will be referred to hereafter as "R.O." and "A.R.O." and the Deputy Election Commissioner as "D.E.C."

4. The petitioner contested the Election as a Swatantra Party candidate with the "STAR" as his Election Symbol. Respondent No. 1 contested the Election as a Congress candidate with "TWO BULLOCKS WITH YOKE ON" (hereinafter referred to as the "BULLS") as his Election symbol.

5. Respondent No. 2 contested the Election as a Hindu Mahasabha candidate with the "HORSE & RIDER" (hereinafter referred to as the "HORSE") as his Election symbol, while respondent No. 3 contested the Election as a Socialist candidate with the "TREE" as his Election symbol. A fifth candidate Chandra Bhan Dutt Ram Pande (Raja of Dhanepur, District Gonda) who had filed his nomination as a Jan Sangh candidate, withdrew his candidature on the last date allowed for such withdrawal. While there were, thus, four contesting candidates for the election to the Lok Sabha from the aforesaid Parliamentary Constituency, the real contest was mainly between the petitioner and Respondent No. 1.

6. The Poll for election to the Vidhan Sabha and Lok Sabha was simultaneous-ly taken in the various Assembly constituencies and Assembly segments of the aforesaid Gonda Parliamentary constituency as follows:—

Assembly Constituency (Parliamentary Constituency—Assembly Segment)	No. of Polling Stations	Date of Poll
Gonda—North	90	19-2-1962
Gonda—East	88	21-2-1962
Mankapur	94	21-2-1962
Gonda—West	86	23-2-1962
Mahadeva	90	23-2-1962

7. The ballot boxes were collected at the close of the poll and were placed in the custody of the respective Returning Officers of the Assembly constituencies who were also the Assistant Returning Officers for the corresponding Assembly segments of the Parliamentary Constituency:

8. The Returning Officer notified the date, time and place for counting the votes polled in the 34 Gonda Parliamentary constituency, as follows :—

Assembly Segment of the Parliamentary Constituency	Date and time as notified	Place of counting
Gonda East	27-2-1962 at 10 A.M.	Combined Office.
Gonda North	27-2-1962 at 10 A. M.	Collectorate, Gonda.
Gonda West	28-2-1952 at 8 A.M.	Combined Office.
Mankapur	28-2-1962 at 8 A. M.	Collectorate, Gonda.
Mahadeva	28-2-1962 at 8 A. M.	Combined Office.
Postal Ballot Papers of entire Parliamentary Constituency	28-2-1962 at about 10 P. M.	Collectorate, Gonda.
Consolidation of the results of the Poll at all Polling Stations.	28-2-1962 at about 10 P.M.	Collectorate, Gonda.

9. The counting of the Vidhan Sabha (Assembly) votes and the Lok Sabha (Parliamentary) votes of the Gonda-East Assembly constituency and the corresponding Assembly Segment of 34 Gonda Parliamentary Constituency commenced simultaneously on 27th February, 1962 at 10 A.M. in combined office set apart for the purpose; and that of the Gonda-North Assembly Constituency and the corresponding Assembly Segment commenced simultaneously in a Shamiana (enclosed by Kanats) pitched for the purpose in the compound of the Collectorate.

10. According to the petitioner, the first round of counting required about two hours and was completed about 2-00 P.M. The subsequent rounds took about 1½ to 1¾ hours each, with the result that the entire counting in both Assembly Segments was completed by about 11-00 P.M. in so far as the counting of the Parliamentary votes was concerned. (As regards the counting of the Assembly votes, however, the end-process, such as the counting of the Postal ballot, the over-all tabulation and reconciliation, the formal declaration of the result of the election and the issue of Certificate of Election to the winning candidate took another two hours or more to complete).

According to Respondent No. 1, the counting was not completed at 11 P.M., but continued till the small hours of next morning and concluded at about 4 A.M. of 28th February, 1962.

11. The petitioner stated that from the counting thus far completed and tabulated in Form 20, it was known to everybody concerned that Respondent No. 1 was ahead of the petitioner by 3,451 votes in the Gonda-East Assembly Segment and by 1,008 in the Gonda-North Assembly Segment.

The Respondent No. 1 did not admit the above figures indicating the result in the manner stated by the petitioner. He, however, admitted that he was reported to be leading.

12. The counting of the Parliamentary votes recommenced on February 28, 1962; and as per schedule (*vide* paragraph 8 above) the ballot papers of the remaining three Assembly Segments were taken up for scrutiny and counting from 8 A.M. on that day.

On 28th February, 1962, the counting of the Parliamentary votes in Gonda-West Assembly Segment of the Gonda Parliamentary Constituency finished at about 8-00 P.M. This operation was conducted without any objections or complaints of any kind whatsoever, whether oral or written, being raised or made by any of the contesting candidates or their Election Agents or by any of their counting agents, alleging any irregularities or lapses on the part of any member of the counting staff or officers, or otherwise.

It was then known that Respondent No. 1 had, in this Assembly Segment alone, gained a further lead over the petitioner of 4,167 votes, over and above the lead of 4,459 votes he had already secured on the previous day.

At about that time, judging by the progressive results of the counting then proceeding of the votes cast in the Mahadeva Assembly Segment, Respondent No. 1 was ahead of the petitioner in that Assembly Segment also by about 3,000 votes.

13. Petitioner stated that in Mankapur Assembly segment, however, the position of Respondent No. 1 showed signs of definite and serious decline to such an extent that the chances of Respondent No. 1's eventual success now seemed doubtful.

14. At about 10-45 P.M. an application (signed by Respondent No. 1) was presented by his Election Agent before the Assistant Returning Officer in charge of the counting of the Mankapur Assembly Segment, for rescrutiny and rechecking of all the ballot papers counted so far. The application was rejected by the Assistant Returning Officer at 11-30 P.M. in writing, after dealing with each ground in detail. Copies of the application and of the order passed thereon by the Assistant Returning Officer are attached to the petition (marked Annexures II-C and II-D respectively).

15. The petitioner stated that at midnight when the counting in this Segment was over and figures were being tabulated for the last round of counting and when it was clear that he had won the election by an overall majority of about 1,600 votes (excluding the small Postal Ballot), the Election Agent of Respondent No. 1 presented another application to the A.R.O. for postponing further operations until next morning and requesting that the votes in this Assembly Segment be then recounted. This too was refused by the A.R.O. in writing. Copies of the application and of the order passed thereon by the A.R.O. are attached with the Petition (marked Annexures II-E and II-F respectively), but the result was not declared by the R.O., who sent a note to the A.R.O. from his bungalow.

Soon, thereafter, the Returning Officer (C. M. Nigam) himself sent a note to the A.R.O. that he would count the Postal Ballot Papers the next day and would declare the result of the Parliamentary election thereafter.

16. It is alleged that the Returning Officer (C. M. Nigam), even when he thus illegally caused a break in the continuity of the counting against his own earlier instructions and contrary to the previously notified programme, did not take any steps to ensure that the used and counted ballot papers in respect of all the five Assembly Segments were placed in his own official custody and with his own seals affixed thereto. He (as well as the A.R.O.s) also did not inform any of the contesting candidates or their Election Agents that they could if they were so minded fix their own seals and signatures on either the packets or on the containers in which such packets had been placed. The R.O. thus committed a breach of Rule 60 of the Conduct of Election Rules, 1961, in all essential matters.

17. On 1st of March, 1962, the Returning Officer at about 1-30 P.M. totalled up the result sheets of the Parliamentary election in Form 20; he then opened, scrutinised and counted the Postal Ballots and entered the result thereof also in the result form. And he announced the total voting figures as follows:—

Candidates	Votes secured
Petitioner	82,478
Respondent No. 1	80,902
Respondent No. 2	27,460
Respondent No. 3	7,676
(Rejected)	7,706).

At this stage the Election Agent of Respondent No. 1 presented an application dated 28th February, 1962, before the Returning Officer praying for a recount on various grounds, particularly as regards Gonda North and Mankapur Assembly Segments. A copy of the application is annexed with the Petition (marked Annexure IV).

In spite of petitioner's objection, respondent No. 1's prayer for recount was allowed by the Returning Officer.

18. The recount of votes in respect of petitioner's Parliamentary constituency (34 Gonda) commenced on March 9, 1962 at 11-30 A.M. in the presence of the Deputy Election Commissioner (P.S. Subramanian) who had been specially deputed for the purpose by the Election Commission, presumably to supervise the process of recount and, if occasion demanded, to issue appropriate directions to the Returning Officer.

At the close of the day, recounting of the entire Mankapur Assembly Segment and of 70 polling stations of Mahadeva Assembly Segment was completed.

On March 10, the votes cast in the remaining Polling Stations of Mahadeva Assembly Segment and in the entire Gonda North Assembly Segment were re-counted before the lunch break.

The net effect of the recount of the three Assembly Segments (namely Mankapur, Mahadeva and Gonda North) completed so far was a difference of only 3 votes compared with the original count and that too was in favour of the petitioner.

Assembly Segment	Original Count		Recount	
	"BULLS"	"STAR"	"BULLS"	"STAR"
Mankapur	19,706	32,759	19,643	32,736
Mahadeva	18,752	15,928	18,748	15,904
Gonda-North	14,069	13,061	14,046	13,021
	52,527	61,748	52,437	61,661
Difference in favour of		9,221		9,224

The total votes polled in these three Segments (including rejected ballot papers) were 1,34,056.

19. After lunch break on March 10, recounting of votes in Gonda East Assembly Segment of the Constituency in question was commenced. During the second round, when Polling Stations Nos. 17 to 32 were being recounted, two extraordinary abnormalities were disclosed. In Polling Stations Nos. 24, 27 and 28, it was found that in the bundle of rejected ballot papers, many of the ballot papers previously rejected on account of their bearing no voting mark at all, or because they bore voting marks on blank area, were now found bearing a voting mark on the "BULLS" symbol of the Respondent No. 1, thus entitling him to have them counted as valid votes in his favour. On the other hand, in Polling Stations Nos. 18, 24, 27, 28 and 32 in the bundles of valid ballot papers previously counted as valid votes for the petitioner at the first count, unusually large numbers of ballot papers were found bearing additional voting marks on one of the other symbols besides a very clear and bold voting mark on the petitioner's "STAR" symbol, thus rendering them liable to rejection at the recount. A striking feature of these new additional marks in both types of cases, was that they were lightly impressed, sometimes showing only half (or less than half) of the voting stamp impression, in ink that was lighter in shade than that of the original voting mark on the papers. The second striking feature was that the lighter second mark on the previously counted valid votes of the petitioner was usually found placed either on the "HORSE" symbol (Printed at the top of the ballot paper) or on the "TREE" symbol (printed at the bottom of the paper) but only rarely on the "BULLS" symbol of Respondent No. 1. A third feature was that the shade and thickness of all these subsequent marks, both on the ballot papers previously rejected as well as on those previously counted as valid votes, were uniform when compared with each other but noticeably different from the varying but bold shades and thickness of the earlier marks.

20. Petitioner stated that the unexpected emergence of these extraordinary features caused such an uproar at the counting tables that the Deputy Election

Commissioner felt compelled to leave his chair and to see for himself at the tables what the trouble was. He closely inspected some of these ballot papers in the light of the peculiar features referred to above and doubtless formed his own impression and opinion concerning them. There was subsequently some consultation between him and the Returning Officer; and as a result the R.O. directed that all such previously valid votes of the petitioner as were now being rejected by him on recount, as well as all those previously rejected ballot papers which were now being validated by him for the Respondent No. 1, should be tied up in separate bundles and a statement of these should also be prepared polling stations-wise (in a form suggested by the D.E.C.) to be kept preserved along with the ballot paper accounts.

21. As the recount progressed and the same remarkable features continued to be noticed in round after round, there was some further deliberation between the Returning Officer and the Deputy Election Commissioner, whereupon the former announced that the recount would be stopped that day after some time and he would then indicate whether the operations would go on or be stayed. However, the process went on till about 8 P.M. and was then stopped for the day. It was discovered at that stage that the packet of counted ballot papers of polling station No. 87 was not traceable; and in its place a packet containing Assembly votes, pink in colour, of the same polling station was found in the bag of the Parliamentary votes. It was given out that the missing packet must inadvertently have got mixed up in the bag of Assembly votes. Effort was then made to trace it out from that bag, which had till then been lying in one of the court-rooms; but after waiting for some time it was said that it could not be traced.

22. The recount of Gonda-West Assembly Segment was commenced on March 11, at 10 A.M. In this Segment again the same abnormal features were detected though in a lesser degree for the reason, *inter alia*, that as many as 17 packages of counted ballot papers (relating to Polling Stations Nos. 65, 69, 70 to 73, 75 to 82 and 84 to 86) were found missing and when later discovered (*vide* paragraph 23 below) were found innocent of any such mischief.

23. As stated above, as many as seventeen out of 86 packets of counted ballot papers relating to the Gonda-West Assembly Segment were found missing and in their place packets of Assembly votes were found in the bag. For sometime, therefore, counting had to be suspended. Thereafter, the A.R.O. (A. S. Misra) brought these packets along with the missing packet of polling station No. 87 of Gonda East Assembly Segment, from somewhere. These eighteen packets were recounted at the last round; and it was plainly noticeable and very significant that the ballot papers therein were entirely innocent of any mischief, there being (in their case) a complete absence of those abnormal features which had been detected in the recount of the other packets of Gonda East and Gonda West Assembly Segments.

24. The petitioner stated that on 11th March, 1962, while the recount of Gonda West Segment was in progress, he presented to the Deputy Election Commissioner an application (in the form of a letter) briefly setting out the facts, enclosing a copy of the telegram already despatched on the previous night by him to the Chief Election Commissioner praying for an investigation into the whole matter and requesting that pending such investigation, the declaration of the result of the Election based on the recount should be withheld. The D.E.C. read the letter and then passed it on to the Returning Officer (C.M. Nigam) and while the latter was reading it, the Superintendent of Police (who was sitting by his side) also read it at the same time.

25. The petitioner alleged that by noon of 11th March, it was quite clear that, as in the case of counted ballot papers relating to the Gonda East Assembly Segment, many of those relating to Gonda West Assembly Segment (excluding those relating to the 17 Polling Stations referred to in paragraph 22 above) had also been tampered with, sometime between the close of their first counting on the night of 28th February and the commencement of their recounting on 11th March.

26. At the lunch-break on March 11, recounting of all votes except the postal ballot papers was finished. The Returning Officer and the Deputy Election Commissioner then retired for lunch. Before doing so, however, the Returning Officer announced that they would reassemble at 2 P.M.; he also instructed the entire staff including those engaged in counting to be present at such reassembly, but he did not say, nor did the petitioner expect that the Returning Officer intended to declare the result of the election at the reassembly.

The original count and the recount of Gonda East and Gonda West Assembly Segments were as follows:—

Assembly Segment	Original Count		Recount	
	"BULLS"	"STAR"	"BULLS"	"STAR"
Gonda East	16,900	13,449	17,025	11,658
Gonda West	11,435	7,268	11,435	7,107
	28,335	20,717	28,460	18,765
Difference in favour of	7,618		9,695	

The difference in favour of Respondent No. 1 had thus increased by 2,077 votes. The total number of votes polled in these two Assembly Segments (including rejected ballot papers) was 72,112.

27. Shortly after 3 P.M. the Returning Officer came in from the adjoining room but again without the D.E.C. He read out the recounted voting figures as entered in the result sheet in Form 20. It is alleged that he completely overlooked the need to recount the postal ballot papers. The recounting was thus technically incomplete, which were then announced as follows:—

NAME OF CANDIDATE	VOTES SECURED
Respondent No. 1	80,937
Petitioner	80,439
Respondent No. 2	27,429
Respondent No. 3	7,674
Rejected	9,741

28. The petitioner stated that the Returning Officer in spite of the direction from the Deputy Election Commissioner to withhold the declaration, on completing the recount, straightway declared Respondent No. 1 as duly elected and a certificate to that effect was issued to him by the Returning Officer forthwith.

29. The petitioner alleged that sometime between the night of 27th February, 1962, when the first count of Gonda East Assembly Segment had been finished and the afternoon of the 10th of March 1962 when its recount commenced, the bag and packets containing the counted Parliamentary ballot papers relating to that Segment had been got at and the ballot papers had been tampered with in such a manner that ballot papers previously counted as valid votes for the petitioner had another mark fraudulently impressed upon them so as to render them rejectable (on the ground of multiple marking) and that, in the like manner, ballot papers which had been previously rejected because they bore no voting mark at all, or because they bore such marks on blank area, had been fraudulently altered by affixing on them the voting mark on the "BULLS" symbol so as to render them valid for being counted as valid votes for the Respondent No. 1.

He also alleged that as in case of the counted ballot papers relating to the Gonda East Assembly Segment, many of those relating to Gonda West Assembly Segment, had also been tampered with in like manner sometime between the close of their counting on the night of 28th February and the commencement of the recounting on 11th March.

30. The petitioner submitted as follows:—

- (i) That the declaration of the result of the Election in favour of the Respondent No. 1 was procured in consequence of extensive tampering with the counted ballot papers after the first count;
- (ii) That the said declaration was purposefully made by the Returning Officer in contravention of the instructions of the Election Commission to withhold the same pending an inquiry into the whole matter

and is therefore *mala fide* and null and void being invalid in law *ab initio*; and

(iii) That the result of the Election in so far as it concerns the Respondent No. 1 has been materially affected:—

- (a) by improper rejection by the Returning Officer of over 1,780 valid votes cast for the petitioner in Gonda East Assembly Segment and over 130 valid votes cast in Gonda West Assembly Segment (total over 1,900 votes), the same having been correctly counted as valid votes for the petitioner at the first count and the relative ballot papers having been subsequently so tampered with before the recount as to give them an appearance of bearing multiple voting marks and thereby rendering them rejectable;
- (b) by improper acceptance by the Returning Officer of over 150 ballot papers in Gonda East Assembly Segment and some 50 ballot papers in Gonda West Assembly Segment (total over 200) as valid votes in favour of the Respondent No. 1, which ballot papers had been properly rejected on first scrutiny under Rule 56 of the Conduct of Election Rules, 1961, as either bearing no voting marks at all or as bearing voting marks on blank area, and the same having been subsequently so tampered with before the recount as to bear a voting mark on the "BULLS" symbol, thereby giving them an appearance of being valid votes for the respondent No. 1;
- (c) by the Returning Officer designedly and illegally refraining on flimsy grounds from continuing and completing the process of counting on the night of February 28, itself as previously notified by the R.O. himself in conformity with Rule 60 of the Conduct of Election Rules, 1961;
- (d) by deliberate breach of his official duty by the Returning Officer and/or by non-compliance with the provisions of the Constitution in that he proceeded to declare the result of the Election in total disregard and contravention of the directions lawfully issued to him by the Election Commission under the power to superintend, direct and control the conduct of elections vested in the Commission under Article 324 of the Constitution of India.

(iv) That the petitioner in fact received a majority of valid votes at the said election.

31. The petitioner prayed that the Election of Respondent No. 1 be declared void and the petitioner be duly elected to the house of people (LOK SABHA) 34 Gonda Parliamentary Constituency and that his costs be awarded against Respondent No. 1.

32. Respondent No. 1 denied that there was any tampering of the ballot paper of Gonda East and Gonda West constituencies, as alleged by the petitioner. He admitted that the recount of votes in Gonda East Segment commenced after the lunch-break on the 10th of March 1962.

Respondent No. 1 also admitted that a number of ballot papers had been incorrectly rejected and a large number of ballot papers had been incorrectly so classed as valid at the first counting. Respondent No. 1 denied the correctness of the statement that in the bundle of rejected ballot papers in respect of the polling stations Nos. 24, 27 and 28 of Gonda East, marks were found on the symbol "BULLS" which had in the first count been rejected as having no mark or marks in blank spaces. Respondent No. 1's contention is that the ballot papers which had actually been marked in his favour had been erroneously rejected at the first counting as being marked for none. In other cases, even though there had been a clear mark in the "BULLS" case, the ballot papers had been wrongly rejected as marked in blank area. In some other cases, it was also found that even though ballot papers had actually been marked, they had been erroneously rejected and marked with the stamp "R.N.M.". Respondent No. 1 further stated that the Deputy Election Commissioner in the early stage of recount on March 9, 1962, had suggested that a ballot paper, containing a mark, howsoever, insignificant should be treated as a valid vote, and the Returning Officer, with the approval and in the presence of the Deputy Election Commissioner accepted acting on the said suggestion, such ballot papers having such marks which were originally stamped as "R.N.M." as valid votes. This happened because the rubber stamp was not affixed by the Assistant Returning Officers themselves, but by subordinates and the signatures of the Assistant Returning Officers were very often mechanically taken at one time on a number of such ballot paper marked by the subordinates. This had the effect of permitting both accidental errors as well as deliberate

miscellaneous. According to Respondent No. 1 in certain polling stations, mentioned in paragraph 19 that even though ballot papers had on their very face been invalid as they had contained marks against more than one candidate, they had been counted, without any justification, as valid votes for petitioner.

33. Respondent No. 1 further alleged that the process by which the valid ballot papers were separated from the doubtful ones, depended entirely upon the uncontrolled will of the counting staff. There was no question of any decision by the Assistant Returning Officer or his assistants at the first count in respect of the ballot papers separated and accepted by the counting staff, as valid.

Respondent No. 1 further stated that the combined office where the counting was made in respect of Gonda East and Gonda West segments was 28'x20' and there was overcrowding as 150 persons were inside it connected with the counting. Under the circumstances, it was not possible for his counting agents to keep a watchful eye on the counting staff, who not only did not discharge their duties properly and efficiently, but some of them abused the opportunity thus available and acted in the interest of the petitioner. The counting staff consisted mostly of temporary hands employed in certain Government departments as also of certain staff belonging to the Antarm Zila Parishad etc. who were easy victims to temptations, influence and intimidation of the Raja of Mankapur who was using all his power, influence and resources in the interests of the petitioner.

It is also alleged that there was insufficiency of light in the combined office when the counting was made, as a result of which proper scrutiny of the valid and invalid papers could not be effected.

34. Respondent No. 1 asserted that after the first counting, the bags and boxes containing the ballot papers were kept in the Triple Lock Room and subsequently removed to the Double Lock Room of the Gonda Treasury. The rooms were guarded by Arm Guards as well as by few men employed by the petitioner for that purpose. It was thus impossible for respondent No. 1 to get hold of the bags surreptitiously.

35. Respondent No. 1 further denied that there was any direction from the Deputy Election Commissioner to the Returning Officer for withholding the declaration of the result. The petitioner attempted to obtain the withholding of the declaration of the result, but respondent No. 1 submitted that the Returning Officer was bound under section 66 of the Representation of People Act to declare the result of the Election and he was justified in doing so.

36. Respondent No. 1 also denied that there was any breach of any official duty on the part of the Returning Officer or any non compliance by him of any provision of the Constitution, or that he in any way acted against any direction of the Election Commission and that even if he had so acted, it would not amount to any violation of any provision of the Constitution of India, which could be the basis for avoiding the election of this respondent.

Respondent No. 1 also denied that the Returning Officer acted illegally in not continuing the process of counting on the night of the 28th February, 1962.

Respondent No. 1 denied that his election has been materially affected either by any improper rejection by the Returning Officer of over 1780 valid votes cast for the petitioner in Gonda East Assembly Segment and over 130 valid votes cast in Gonda West Assembly Segment (total over 1900 votes), or by any improper acceptance by the Returning Officer of over 150 ballot papers in Gonda East Assembly Segment and some 50 ballot papers in Gonda West Assembly segment (total 200) as valid votes in favour of Respondent No. 1.

37. Respondent No. 1 pleaded that the Raja of Mankapur who sponsored the candidature of the petitioner wielded great influence on the class of people that constituted the bulk of the counting clerks and, therefore, they helped in manipulating their counting in favour of the petitioner. That aforesaid designs further assisted by insufficiency of light in the combined office and no proper check on the scrutiny of the ballot papers could be maintained on account of the overcrowding.

38. Respondent No. 1 also contended that the Tribunal would have no jurisdiction to go into the question of any alleged tampering, as those allegations are not covered by any ground mentioned in section 100 of the Representation of the People Act.

39. Respondent No. 1 also contended that the petitioner and his election agent were present throughout at the recount and no objections were preferred by either of them in respect of any acceptance or rejection or to the exercise of any

discretion by the Returning Officer, in spite of every available opportunity. The petitioner is now stopped from raising any plea against the decisions of the Returning Officer on the rejection or acceptance of ballot paper.

40. Respondent No. 1 filed recrimination under section 97 of the Representation of People Act, 1951, by which he alleged that the petitioner himself and through the five base candidates of Assembly constituencies who acted with his approval and consent and through other persons acting with his knowledge and consent committed the corrupt practices as defined in section 123 of the Representation of People Act, 1951.

41. The petitioner himself and with his consent and approval Naurang Singh committed corrupt practice of bribery as mentioned below:—

(a) K. S. Pathak, an independent candidate had considerable hold in the constituency and had good prospect against the Swatantra Party candidate Naurang Singh. The petitioner himself and with his consent and approval Naurang Singh promised to give gratification to K. S. Pathak with a view to induce the latter not to stand as candidate at the election for the U.P. State Legislative Assembly from the Gonda North Constituency.

(b) The petitioner and Naurang Singh offered to pay Rs. 1,000 also to K. S. Pathak who accepted the offer and withdrew from the contest.

42. The petitioner and Naurang Singh induced Siraj Ahmad to stand as an independent candidate at the election in Gonda North Assembly constituency with a view to divide the votes of the congress. Naurang Singh offered to use his influence in region of the Intilathoke Block Development and support Siraj Ahmad for the election to the post of Block Pramukh of the said block.

The petitioner and Naurang Singh also offered to give money to Siraj Ahmad to cover all the expenses and also to provide workers and supporters for Siraj Ahmad for his election for the U.P. State Legislative Assembly Constituency of Gonda North.

43. Naurang Singh with the consent and at the instance of the petitioner, induced Mahadeo Prasad to stand as a candidate at the Assembly Election in Gonda North with a view to divide the votes of Congress candidate. Naurang Singh offered to use his personal influence to get Mahadeo Prasad's son appointed as a Teacher at Tulsipur College. The petitioner promised that he would meet all the expenses of Mahadeo Prasad in respect of election in question and would also provide workers for his election.

44. That Naurang Singh with the consent and approval of the petitioner and with the object of impairing the prospects of the congress candidate and to gain advantage thereby for themselves, distributed money through Jamuna Prasad Tewari, Sarpanch of the village to about 300 voters on 18th February, 1962, with the stipulation that they should refrain from voting.

45. Naurang Singh with the consent of the petitioner promised to pay money to voters who promised to vote for them and money was actually paid after it was ascertained that the voters had in fact voted for them.

46. The petitioner and his agents, workers and supporters, with his knowledge and consent hired bullock-carts and other vehicles for conveyance of the electors of a number of villages to the polling stations and back to the said villages on the date of poll.

47. The petitioner and with his consent and approval, Raja Raghvendra Pratap Singh who sponsored his candidature committed corrupt practice of undue influence as defined in section 120(2) of the Representation of People Act, 1951.

48. The petitioner and Raja Raghvendra Pratap Singh and with his consent the workers and supporters of the petitioner, organised a Yagya on 4th February, 1962, at Sarvan Pakar. The petitioner performed the religious rites connected with the Yagya and appealed to the people to support him on the ground of Hindu religion. The petitioner and Raja Raghvendra Pratap Singh impressed upon the general public and the majority of the electorate of the constituency who had gathered there that they were spiritually and religiously to be regarded as chaste and pious Hindus and further impressed upon them that Ram Ratan Gupta, opposing the petitioner, was not so; and that the electorate would be acting against the divine precepts in supporting and giving the votes to Ram Ratan Gupta and further that the petitioner emphasised before the gathering that Ram Ratan Gupta

was a heterodox Hindu in character and conduct and in his habits of eating and dining with Muslims and he eats eggs, chicken and Murgas and fish and all kinds of flesh and is thoroughly impious and in-eligible to be called a Hindu Bania and, therefore, the general Hindu public and the electorate would be acting against the precepts of Hindu religion if the electorate would not accept his advice as their proper representative and vote for him.

Respondent No. 1 submitted that the above statement about his personal character was false to the knowledge of the petitioner and which they had no reason to believe to be true..

49. Between the period commencing from 6th February 1963 to 18th February 1962 leaflets and special election issues of a paper known as "NAGRIK" which is published at Kanpur were distributed in the constituency by the petitioner and with his consent by his workers and supporters. The leaflets were published by one Abdul Rahim Khan *alias* Buddhu Khan who was the agent of the petitioner. In this issue of Nagrik, false statements regarding the personal character and conduct of Respondent No. 1 (Ram Ratan Gupta) were made by the petitioner and the persons distributing them with his consent. The petitioner knew these allegations to be false.

50. The petitioner himself and through his agents and workers and other persons acting with his knowledge got the votes of a number of dead and absent electors polled through fictitious persons impersonating for those dead and absent electors in his favour.

51. The petitioner incurred for greater expenses than Rs. 25,000 as prescribed in section 77 and rule 90 of Conduct of Election Rules, 1951.

52. Respondent No. 1, therefore, contended that the petitioner is not entitled to be declared elected even if the election of the Respondent is declared invalid and further that the petitioner is liable to be disqualified for having committed corrupt practices in relation to the Election.

53. The petitioner denied that he committed any corrupt practice as alleged by Respondent No. 1 within the meaning of section 123 of the Representation of People Act.

54. The petitioner denied that he or Naurang Singh offered any gratification to Sri Pathak to induce him not to stand as a candidate at the said Election. In fact, Sri Pathak at all material times was and still is an active supporter of Respondent No. 1.

55. The petitioner denied that he or Naurang Singh induced Siraj Ahmad to stand as a candidate at the election or that any gratification was promised to be given to him.

56. The petitioner denied that any gratification was promised to Mahadeo Prasad. The petitioner submitted that the allegation of offering gratification to Mahadeo Prasad is totally false. Further, the allegation that Jamuna Prasad distributed money to voters on 18th February, 1962 was also false.

57. The petitioner denied that Raja Raghvendra Pratap Singh exercised any undue influence as alleged by Respondent No. 1. The petitioner denied that he and Raja Raghvendra Pratap Singh performed the Yagya at Sarvan Pakar or that they did anything on that date and at that place to convey to the voters any impression about their religious orthodoxy or spiritual eminence, or to impress upon the voters that the Respondent No. 1 was not religious minded. The allegation that the aforesaid alleged intentions were expressed by the petitioner and Raja Raghvendra Pratap Singh in their speeches is wholly false. The petitioner denied that the allegation that Respondent No. 1 eats eggs, chicken, Murga, flesh and fish and is impious and not worthy of the name of a Hindu Bania, is false.

58. The petitioner denied that the publishers and printers of the paper known as "NAGRIK" were his agents, workers and supporters. He said that he had nothing to do with the publication of any article with the said paper. The alleged distribution of this paper is also denied by the petitioner.

59. The petitioner admitted that Abdul Rahim Khan worked as a counting agent for him at the time of recounting, but he denied that Abdul Rahim Khan printed and published the said leaflets (Annexure 6 of the Recrimination) with the knowledge and consent of the petitioner, or that the same was distributed at any time in the constituency with his knowledge or consent.

60. The petitioner also denied that vehicles or conveyances were ever hired for carrying voters to and from the polling stations in any part of the constituency either by him or by his agent with his consent.

61. The allegations of voting by impersonation or voting in the name of dead persons are denied as absolutely false.

62. The petitioner stated that he has given account of all expenses and he did not incur election expense exceeding the prescribed limit.

63. Respondents 2 and 3 remained absent and did not file any written statement.

64. FOLLOWING ISSUES WERE FRAMED:

(1) Whether the counting at the first counting was made improperly and irregularly as alleged by Respondent No. 1?

(2) Whether there was tampering with the ballot papers between the first count and the recounting? If so, to what effect?

(3) Whether the allegations of tampering are vague and suffer from want of necessary particulars, and are merely in the nature of inference? If so, its effect?

(4) Whether there was improper rejection by Returning Officer of any valid ballot papers alleged to have been cast for the petitioner in Gonda East Assembly Segment and in Gonda West Assembly Segment in the final counting? If so, how many ballot papers and if so its effect?

(5) Whether there was improper acceptance by the Returning Officer of any ballot papers in Gonda East Assembly Segment as valid votes in favour of Respondent No. 1 at the final counting? If so, of how many votes and its effect?

(6) Did the Returning Officer designedly and illegally refrain from completing the counting of votes in the night of February 28, 1962 in violation of Rule 60 of the Conduct of Election Rules, 1961?

(7) (a) Whether any improper rejection or acceptance of votes by the Returning Officer has materially effected the result of the election?

(b) Did petitioner in fact receive a majority of valid votes at the Election?

(8) Whether the counting agent of respondent Nos. 2 and 3 were nominated by Raja of Mankapur? If so, to what effect?

(9) Whether the petitioner having raised no objections at the recount in respect of the alleged improper acceptance or rejection of ballot papers by the Returning Officer, is now stopped from raising any plea against the decision of the Returning Officer on the rejection or acceptance of ballot papers?

(10) Whether there was any breach of official duty by the Returning Officer? Has it materially affected the result of the Election?

(11) Whether the Returning Officer received any directions from the Election Commission to withhold the declaration of the result of election? If so, whether such directions were lawfully issued and whether the declaration of the result was in breach of the provisions of the Constitution? If so, did it materially affect the result of the election?

(12) Whether the petitioner is entitled to be declared elected to the House of the People (Lok Sabha) from 34, Gonda Parliamentary Constituency?

(13) Whether the petitioner is entitled to any relief? If so, to what effect?

ADDITIONAL ISSUES:

(14) Whether the petitioner and Naurang Singh with the consent of the former promised to give gratification to K. S. Pathak with a view to induce the latter not to stand as a candidate at the election for the U. P. State Legislative Assembly from the Gonda North constituency as mentioned in paragraph 5 (1) (a) and (b)?

(15) Whether the petitioner and Shri Naurang Singh offered gratification to Siraj Ahmad with a view to stand as a Muslim candidate for election to U. P. Legislative Assembly from Gonda North Constituency as mentioned in paragraph 5(ii) (a) and (b)?

(16) Whether Naurang Singh with the consent of petitioner offered gratification to Mahadeo Prasad in order to induce him to stand as a candidate at the Assembly Election from Gonda North as mentioned in paragraphs 5(iii)(a) and (b)?

(17) Whether Naurang Singh with the consent and approval of the petitioner and with a view to impair the prospects of the Congress candidate at the election and gain advantage for themselves, distributed money to 300 voters with the stipulation that the latter would refrain from casting their votes?

(18) Whether on 9th February 1962 Naurang Singh and persons mentioned in Annexure II in the villages mentioned in paragraph 5(v) with the consent of the petitioner promised to pay money to voters to vote for the petitioner and Naurang Singh and,

Whether they paid the money after it was ascertained that voters had in fact so voted?

(19) Whether the petitioner and with his consent Trilok Singh, Dasrath and Amar Nath Singh fed the voters in order to induce them to cast votes for the petitioner as mentioned in paragraph 5(vi)?

(20) Whether Naurang Singh with the workers and servants provided liquor to the scheduled caste voters with a view to induce the latter to vote for the Swatantra Candidate as mentioned in paragraph 5(vii)?

(21) Whether Raja Raghvendra Pratap Singh with the consent of the petitioner committed the corrupt practice of undue influence as detailed in Annexures 3, 4 and 9 to the recrimination?

(22) Whether the petitioner canvassed in the constituency on grounds of caste and community?

(23) Whether the contents of pamphlet in Annexure 5 was designed for appeal on grounds of caste?

(24) Whether the petitioner and Raja Raghvendra Pratap Singh with the former's consent, organised and performed a Yagna at Sarvan Pakar and addressed the public there appealing to them on grounds of Hindu religion to vote for the petitioner and not to vote for Ram Ratan Gupta who was not religious?

(25) Whether the allegations made about the personal character of R. R. Gupta as mentioned in paragraph 21, were false in the knowledge of the petitioner and which, he had no reason to believe to be true and had every reason to believe it to be false?

(26) Whether Abdul Rahim Khan was an agent of the petitioner, and

Whether the statements in leaflets mentioned in paragraph 22 amounted to allegations against the personal character and conduct of R. R. Gupta which were published and which the petitioner and Budhu Khan knew to be false and did not believe to be true?

(27) Whether the weekly paper Nagrik mentioned in paragraph 23 was published in Gonda Constituency, contained false statement regarding personal character and conduct of R. R. Gupta which the petitioner did not believe to be true and believed them to be false?

(28) Whether the petitioner committed the corrupt practice under section 123 (5) as mentioned in paragraph 24?

(29) Whether the petitioner got the votes of dead and absent electors cast in his favour through impersonation as mentioned in paragraph 25?

(30) Whether the petitioner has committed corrupt practice as defined in section 123 (6) as mentioned in paragraph 26?

(31) Whether the petitioner is liable to be disqualified for having committed corrupt practices in relation to election?

(32) Whether the Tribunal has jurisdiction for the purposes of the petition to investigate the question of alleged tampering of the ballot papers and set aside the decision of the Returning Officer?

65. FINDINGS

Issue No. 1	..	No.
Issue No. 2	..	Yes.
Issue No. 3	..	No.
Issue No. 4	..	Yes.
Issue No. 5	..	Yes.
Issue No. 6	..	Yes.
Issue No. 7(a)	..	Yes.
Issue No. 7(b)	..	Yes.
Issue No. 8	..	No.
Issue No. 9	..	Petitioner is not estopped.
Issue No. 10	..	Yes, Yes.
Issue No. 11	..	Yes, Yes, Yes.
Issue No. 12	..	Yes.
Issue No. 13	..	As stated.

ADDITIONAL ISSUES

Issue No. 14	..	No.
Issue No. 15	..	No.
Issue No. 16	..	No.
Issue No. 17	..	No.
Issue No. 18	..	No. No.
Issue No. 19	..	No.
Issue No. 20	..	No.
Issue No. 21	..	No.
Issue No. 22	..	No.
Issue No. 23	..	No.
Issue No. 24	..	No.
Issue No. 25	..	Not proved. Does not arise.
Issue No. 26	..	No. The statement of leaflets mentioned in Para. 22 do not amount to allegations against the personal character and conduct of Ram Ratan Gupta. Does not arise.
Issue No. 27	..	Respondent No. 1 failed to prove that the contents of Weekly Paper Nagrik regarding his personal character and conduct were false. The petitioner had nothing to do with the publication and distribution of the Nagrik dated 6-2-62 and 13-2-62.
Issue No. 28	..	No.
Issue No. 29	..	No.
Issue No. 30	..	No.
Issue No. 31	..	No.
Issue No. 32	..	Yes.

REASONS FOR THE ABOVE FINDINGS

66. Issue No. 1.

This issue was framed on the allegations made by Respondent No. 1 in paragraphs 21(iv) to 21(vii), 21(ix), 21(xi), 21(xiii), 22(i) and 22(ii) of his written statement.

The allegations in brief are as follows:—

- (i) The counting staff not only did not discharge their duties properly, but some of them abused the opportunity and acted in the interest of the petitioner.
- (ii) The combined office, in which the counting of Gonda East and Gonda West segments was done was not sufficiently large as a result of which there was overcrowding, on account of which the counting agents could not keep a watchful eye on the actions of the counting staff.
- (iii) The counting agents could not verify whether the sorting done by the counting staff for determining the valid and invalid votes were being correctly done.
- (iv) There was also insufficient light in the combined office and, in the result, invalid and doubtful votes got mixed up and were put in with valid votes and some valid votes were excluded from counting.
- (v) There was large scope for deliberate mischief as well as for inadvertent mistakes by the counting staff.
- (vi) The petitioner through his powerful supporter, the Raja of Mankapur, availed of the opportunity, whereby the counting clerks counted the invalid votes in favour of the petitioner and omitted to count the valid votes in favour of the Respondent No. 1.
- (vii) Complaints about the insufficiency of light, about over-crowding and about want of proper accommodation were made to the Assistant Returning Officer (A. S. Misra). He arranged for better lighting, but was unable to do anything about the want of proper accommodation.
- (viii) The A.R.O. did not take the decision himself in the matter of rejection or acceptance of the doubtful ballot papers but left the decision in most cases to the counting clerks, supervisors or the Assistants sitting by his side. The Assistant Returning Officer mechanically put his initials on the seals fixed by the Assistants on the reverse of the ballot papers.

67. The burden to prove the above allegations rested entirely on Respondent No. 1.

Under Section 114 Illustration (e) of the Evidence Act, the presumption is that "judicial and official acts have been regularly performed".

The dates of polling for election to the Vidhan Sabha and Lok Sabha and the dates for counting the votes of the polling stations of Gonda East and Gonda

North, Gonda West, Mankapur and Mahadeva have been stated in paragraphs 6 and 8 of the judgment. For convenience of reference, it is re-stated as below:—

SEGMENTS OF 34 GONDA PARLIAMENTARY CONSTITUENCY

Name of segment	Name of Assembly candidates (SP)	A. R. O.	Date of 1st counting	Date of recounting
1. Gonda North	Naurang Singh	R. P. Singh	27.2.1962	10.3.1962
2. Gonda East	Ragho Ram Pande	A. S. Misra	27.2.1962	10.3.1962
3. Gonda West	Capt. Ram Garid.	A. S. Misra	28.2.1962	11.3.1962
4. Mahadeva	Baldeo Singh	D. S. Shukla	28.2.1962	9.3.1962 (P. S. 1 to 70) 10.3.1962 (P. S. 71 to 90)
5. Mankapur	Raja Raghvendra Pratap Singh	S. R. Misra	28.2.1962	9.3.1962

68. Ex. P. 14 is a notice which was issued on 10th February 1962 by R. B. Johri, who was the District Election Officer, Gonda. By this notice, the candidates were intimated that the postal ballot papers of Gonda Parliamentary Constituency were to be counted and the result of polling of all the polling stations consolidated at the Collectorate, Gonda on 28th February 1962 at about 10 p.m.

It is not disputed that the sorting of ballot papers and counting of votes of Gonda East and Gonda West Segments of the Parliamentary Constituency was done in the combined office on the dates already mentioned.

It is also not disputed that 16 counting tables were arranged in this combined office and that at each counting table, there were two counting clerks, one counting supervisor. The A.R.O.'s table was facing the counting tables.

It cannot be disputed that the A.R.O. before counting commenced instructed the counting staff the manner of sorting and the procedure that was to be followed by the counting staff in respect of doubtful ballot papers.

69. Ex P. 160 is the Hand Book for Returning Officer. Procedure for counting is laid down in Rule 15 Under Chapter VIII with illustration for the arrangement of the tables for seating the counting clerks, counting supervisors and other staff.

Rule 15(e) casts a duty on the Returning Officer to train the counting assistants in disposing of doubtful ballot papers, so that an unnecessarily large number of them is not kept in the doubtful group.

Under Rule 15(k) the Returning Officer i.e. A.R.O. has to scrutinise each ballot paper in the doubtful bundle.

The manner of scrutiny and rejection is laid down in Rule 15(k) (i) to (iv). The rejection is to be marked as follows:—

- (i) R.N.M. (Reject—No marking).
- (ii) R.M.B.A. (Reject—Mark on blank area).
- (iii) R.M.V. (Reject—Multiple voting).
- (iv) R.V.I. (Reject—Voter identifiable).
- (v) R.M. (Reject—Mutilated).
- (vi) R.N.G. (Reject—Not genuine).

There is further direction that when finally rejecting any ballot paper, a reasonable opportunity to inspect it is to be given to the candidate or his agent, who desires to do so.

70. The combined office at Gonda, where the counting was done was inspected by me on 14th December 1963. I have drawn a rough sketch of the combined office noting light points and the doors fitted to this room. The room measures 20' East-West and 35' North-South. The open verandah is on the East. The roofs on this verandah are supported by arches, three of which are directly in front of this combined office. They are 11 feet in height and their span is 9'-1½". The doors fixed to this room are of fairly large size. The panels of these doors have glass panes throughout from a height of 3'-3" from the bottom. These doors have also arches over them which have glass panes. There are two sky lights in the Eastern wall of the combined office. The light in this room comes mostly from Eastern side. The sketch map and my report is on record.

71. Respondent No. 1 has examined Rama Nath Misra (R.W. 1), Mujtaba Husain (R.W. 2), Sheo Bahadur (R.W. 3), Achhutanand Tripathi (R.W. 4), Parmanand Agnihotri (R.W. 6), Bhagwati Prasad (R.W. 14), Kali Chander Johri (R.W. 19) and Krishna Madho Saran (R.W. 20) in support of his allegations.

Rama Nath Misra (R.W. 1), is the Election Agent of Respondent No. 1. He has deposed that the natural light in this room could come only from the Eastern side. On the eastern side there is a verandah, which was covered on the day of counting by Kanats. Inside the room, there were two light points hanging from the ceiling—one near the table of the A. R. O. and the other in the middle of the room. The bulbs were of small watts—may be 25 or 40 watts.

He goes on to say that he and other counting agents complained to the A. R. O. about the insufficiency of light and over-crowding. Some of the counting clerks also were murmuring about insufficiency of light. He says that the A. R. O. asked Sri Burk to send for extra high power bulbs and for petromaxes. In spite of this requisition, no change in the lighting arrangement was made on 27-2-1962.

Mujtaba Husain (R. W. 2) was the counting supervisor. He was at table No. 16.

Sheo Bahadur (R. W. 3) was also a counting supervisor. He was at table No. 2.

Achhutanand Tripathi (R. W. 4) was a counting clerk at table No. 11.

Parmanand Agnihotri (R. W. 6) was counting agent of Respondent No. 1 on 27-2-1962 and 28-2-1962 for Gonda East and Gonda West Assembly Segments. He attended the counting in this combined office.

Bhagwati Prasad (R. W. 14) was the counting agent of Gomti Prasad Yadav, who was a candidate for U. P. Assembly Seat. He also attended the counting in the combined office.

The above named witnesses have deposed that the combined office was lighted only by two Electric bulbs and they found the light in the combined office insufficient during the counting of the votes.

72. Rama Nath Misra (R. W. 1) in his cross-examination (Paragraph 60) says that on conclusion of counting of Gonda West constituency, he had a complaint in mind that the supervision at the counting tables by the counting agents was not satisfactory on account of congestion. At that time he had no other complaint.

On 27-2-1962, he made oral complaint to the A. R. O. (A. S. Misra) at about 12 noon about the congestion and insufficiency of accommodation for the counting agents, but the A. R. O., though he fully realised the difficulty, expressed that he could not change the place as all other places were occupied for counting of other segments.

There is nothing on record to show that he made any written complaint to the A. R. O. regarding the insufficiency of light.

Mujtaba Husain (R. W. 2) also admits in his cross-examination that he did not make any complaint in writing to the A. R. O. about the insufficiency of light, nor did Sheo Bahadur (R. W. 3), Achhutanand Tripathi (R. W. 4), Parmanand Agnihotri (R. W. 6) made any complaint oral or in writing about the insufficiency of light.

73. Ex. P. 3 is the application filed by Respondent No. 1 for recount. Various grounds have been mentioned therein for recounting of the votes, but insufficiency of light was not made a ground.

I sent for the record of the writ petition No. 81 of 1962—Ram Ratan Gupta vs. Election Commission of India—filed before the High Court of Judicature at Allahabad (Lucknow Bench). This writ petition was moved by Respondent No. 1 to prevent the Chief Election Commissioner, Sri K. V. K. Sundaram from holding immediate enquiry against the Returning Officer and other election staff.

In this writ petition of the Respondent, various grounds of irregularity have been alleged, but insufficiency of light was not one of them.

I find that there was sufficient light in the combined office on 27-2-1962 and 28-2-1962 when the ballot papers of Gonda East and Gonda West were sorted, scrutinised and the votes counted.

74. V. B. Bhadkamkar (P. W. 2) is the Election Agent of the petitioner. He deposed that no one complained that light in the combined office was not sufficient.

Dashrath Prasad Shukla (P. W. 4), who was the counting supervisor at table No. 9 in the combined office, has deposed that there was sufficient light in the room and the fixing of *kanats* to the Eastern verandah did not darken the room.

In my opinion, this is correct as the verandah arches are 11' in height while the *kanats* are usually 6' in height leaving sufficient space for the light to come from the East to the combined office.

Bahadur Singh (P. W. 5) was counting clerk at Table No. 2. He says that the light in the room on 27-2-1962 and 28-2-1962 was the same. No bulbs were changed on 28-2-1962.

Ram Newas (P. W. 6) was counting clerk at table No. 16. He has deposed that there was sufficient light at all times on 27-2-1962 and 28-2-1962.

In his cross-examination he asserts that there was enough light in the room irrespective of electric lights. He did not see any change in the light on 28-2-1962.

I see no reason to disbelieve the above witnesses.

75. Rama Nath Misra (R. W. 1) in his cross-examination admits that he did not know the counting staff at the time of counting. Therefore, he cannot say what counting clerks were doing the work of sorting and counting at the various tables.

Mujtaba Husain (R. W. 2) was the counting supervisor at table No. 16. He has stated that Ram Newas (P. W. 6) was not a counting clerk at his table on 27-2-1962 and 28-2-1962.

In his cross-examination, memory test was applied to him. When he was asked about the second counting clerk at his table, he could not give his name.

Similarly, Sheo Bahadur (R. W. 3), who was counting supervisor at table No. 2, has come forward to state that Bahadur Singh (P. W. 5) was not a counting clerk with him, but when questioned in his cross-examination, he could not give the names of the counting clerks working at his table.

The above-named Government officials who have been examined by the Respondent No. 1 have been influenced and are evidently telling lies.

76. I sent for the record from the District Magistrate Gonda in this connection. In the appointment order, names of Deshrath Prasad Shukla (P.W. 4), Ram Newas (P.W. 6), Hanuman Prasad (P.W. 7) appear in the list. The appointment order shows that these clerks were appointed as counting assistants for counting of votes of Gonda East and Gonda West Segments on 27th February 1962 and 28th February 1962. Their initials appear against their names.

It is, therefore, abundantly clear that they acted as counting assistants on the relevant dates in the combined office of Gonda Collectorate.

Permanand Agnihotri (R.W. 6) in paragraph 15 of his deposition says that the Election Inspector had a chart from which he allotted the tables to various counting clerks and supervisors.

Bhagwati Prasad (R.W. 14) also says in paragraph 13 of his deposition that A.R.O. (A. S. Misra) had read out from a chart the allotment of tables naming the counting clerks and supervisors who were to work on the respective tables.

From their evidence, it is clear that the chart for seating arrangement of the counting staff was prepared allocating the tables to different counting clerks. This chart was sent for from the Returning Officer, Gonda, but it was not produced. Information was given that such a chart was not maintained, although a similar chart was prepared at the time of recounting.

It appears to me that the chart of the first counting of Gonda East and Gonda West has been suppressed.

I am satisfied that Dasbrath Prasad Shukla (P.W. 4), Bahadur Singh (P.W. 5), Ram Newas (P.W. 6) and Hanuman Prasad (P.W. 7) did the counting in the combined office on the relevant dates.

I see no reason to disbelieve their testimony that there was sufficient light in the combined office on 27-2-1962 and 28-2-1962.

77. Respondent No. 1 sought to support the allegations about insufficiency of light by correspondence dated 27-2-1962 between Shri Burk Kali Chander Johri, Nazir Sadar, Maqbool Husain, Election Inspector and Krishna Madho Saran, Treasury Officer, Gonda, appearing on a scrap of paper (Ex. R. 76).

There is nothing on record to show that A. S. Misra, Assistant Returning Officer directed Sri Burk to make arrangement for lights. Sri Burk has not been examined by Respondent No. 1.

Kali Chander Johri (R.W. 19) admits in his cross-examination that he had nothing to do for providing lights for counting in election. From his further cross-examination as well as from the cross-examination of Krishna Madho Saran (R.W. 20), it is abundantly clear that this correspondence (Ex. R. 76) has been fudged up at some later date in order to support the allegations of Respondent No. 1.

This conclusion finds support from the fact that no written complaint whatsoever was made by Rama Nath Misra (R.W. 1) or any one on behalf of Respondent No. 1 alleging insufficiency of light in the combined office.

78. Rama Nath Misra (R.W. 1) has stated in paragraph 14 of his deposition that it was absolutely impossible for any counting agent to see as to what actually was going on, at the counting tables. Due to the rush and congestion, it was not possible for six counting agents to see what was going on at these tables. In fact, a counting agent was practically stuck where he was. Due to the paucity of space, the counting agents were either sitting on those benches or were standing in between the two tables. It was not possible for them to move freely and see as to what was going on at the counting tables.

He goes on to say in paragraph 60 of his deposition that on 27th February 1962, he made oral complaint about the congestion to the A.R.O. (A. S. Misra), who told him that they could not shift as there was no other place available. A. S. Misra had not been examined by Respondent No. 1.

This is contradicted by the A.R.O. (A. S. Misra) in his affidavit (Ex. P. 136), in the writ petition, wherein he says that the combined office was a "bit crowded".

It is, therefore, incorrect that it was over-crowded or that he expressed his inability to shift the counting to some other place.

79. Rama Nath Misra (R.W. 1) has been contradicted by Respondent No. 1's own witness Muftaba Husain (R.W. 2). In para. 15, he says that the counting agents of the different candidates used to move about in the counting hall in order to watch the counting.

Sheo Bahadur (R.W. 3) in the last paragraph of his cross-examination says that from the different counting tables, persons including counting agents used to go to the A.R.O.'s table, but in this, they had to move the chairs of supervisors as there was congestion.

It is clear from the Respondent No. 1's own witnesses that the combined office, though a bit crowded, was not so over-crowded as to prevent free movement of the counting agents of the candidates.

Hanuman Prasad (P.W. 7), in paragraph 8 of his deposition, has denied Respondent No. 1's allegation that on account of crowd the counting agents could not supervise the counting. He further says that the counting agents of the candidates used to sit on the benches provided for them and that they also used to come to the counting tables.

I find that there was no over-crowding in the combined office at the time of counting which could have hampered the work of counting agents or the counting staff.

80. Respondent No. 1's own witness Bhagwati Prasad (R.W. 14) acted as a counting agent for Gomti Prasad Yadav at the combined office. His evidence is very revealing in paragraph 9 of his deposition. He has stated that he was busy in watching the counting that was going on on the counting tables 1, 2, 3. About two and a half hours were taken for sorting and counting of the ballot papers of one round. During this period, the supervisor of that table kept watching the sorting and counting done by the counting clerks. The supervisor was continually watching, but he could not say whether the sorting and counting were being done correctly or not.

The witness himself was watching the sorting and counting done by the counting clerks and he was satisfied that this was done correctly.

In paragraph 10 he says that he did not make any complaint whatsoever to any body regarding the sorting and counting done by the counting clerks and supervision by the supervisor in respect of the counting made on 27-2-1962, which continued upto 3 A.M. of 28-2-1962.

He further says that to his knowledge, the counting clerks on counting tables Nos. 1, 2, 3 and the supervisors on the said tables did not commit any mistake in sorting and counting and supervision of the ballot papers.

The evidence of Rama Nath Misra (R.W. 1) that the counting agents were stuck at their post on account of over-crowding and therefore could not check the sorting—cannot be believed.

81. Rama Nath Misra (R.W. 1) in paragraph 15 of his deposition has stated about the procedure followed by the counting staff when the counting commenced. He saw them incorporating the Assembly votes of pink colour in Parliamentary votes of white colour (obviously he means the ballot papers). Then he saw them putting the ballot papers into the trays of the candidates, which they considered valid and the ballot papers which they thought rejectable were taken to the A.R.O. (A. S. Misra). He says that the votes which the counting clerks considered as valid were never taken to the A.R.O.

In paragraph 17, he says that the rejectable ballot papers which were brought by the counting clerks to the table of the A.R.O. were being stamped as R.N.M., R.M.B.A. or R.M.V. by those assistants to the A.R.O. The A.R.O. did not put these stamps himself. After these ballot papers were thus stamped, they were placed before the A.R.O. by the assistants in bunches and he used to sign them mechanically.

Rama Nath Misra (R.W. 1) is evidently wrong when he says that the rejectable ballot papers were taken by the counting clerks. In fact, the rejectable ballot papers were always taken by the counting supervisors to the A.R.O. for his decision [vide depositions of Mujtaba Husain (R.W. 2) and Sheo Bahadur (R.W. 3)]. They were counting supervisors.

82. Rama Nath Misra (R.W. 1) has been contradicted by Respondent No. 1's own witnesses Mujtaba Husain (R.W. 2), Sheo Bahadur (R.W. 3), Achhutanand Tripathi (R.W. 4), Parmanand Agnihotri (R.W. 6) and Bhagwati Prasad (R.W. 14).

Mujtaba Husain (R.W. 2) in paragraph 12 of his cross-examination says that the doubtful ballot papers which he took were handed over to the A.R.O. (A. S. Misra). The A.R.O. used to take them by his own hands. But he does not remember whether every time that he took the ballot papers to the A.R.O.'s table, he handed them to the A.R.O. personally or not. He cannot say whether the A.R.O. himself looked into the doubtful ballot papers when he handed them over to him.

In paragraph 13 of his cross-examination, he says that he knows the duty of the A.R.O. who is to give decisions on ballot papers as to whether they or any of them were to be rejected or not. If A.R.O. says that he gave his decisions on all doubtful ballot papers about their rejectability, it will not be incorrect.

Sheo Bahadur (R.W. 3) has deposed that he used to take the rejectable ballot papers both of Parliament and of Assembly to the table of the A.R.O. and there used to hand them over to the assistants of the A.R.O. sitting by his side. The assistants used to stamp appropriately the rejectable votes, then,

after placing them before the A.R.O. and obtaining his initials, those ballot papers were returned to him. He then used to go back to his table, where the counting clerks made out bundles of 50 each of the ballot papers candidate-wise and also of the rejected ballot papers and tied them with thread. Thereafter, he used to make the entries in Form 16.

Parmanand Agnihotri (R.W. 6) says that supervisors used to take the ballot papers of that tray to the table of the A.R.O. and the assistants of the A.R.O. used to stamp appropriately those ballot papers. Then A.R.O. used to put signatures on them.

Dashrath Prasad Shukla (P.W. 4) was also a counting supervisor. He has stated about the procedure which was followed for sorting the ballot papers and the decision of the A.R.O. on doubtful ballot papers (*vide* para. 7). This is according to the rules given in Ex. P. 160 mentioned in paragraph 68 of the judgment.

Bahadur Singh (P.W. 5) was the counting clerk. He has stated in paragraph 20 of his deposition that instructions were issued in Hindi by A.R.O. for conducting the counting. He also gave oral instructions and that the counting clerks did the counting according to the instructions given to them orally as well as in writing.

Bahadur Singh (P.W. 5) is corroborated by Ram Newas (P.W. 6) and Hanuman Prasad (P.W. 7).

Their testimony is supported by the affidavit Ex. P. 136 of A.R.O. (A.S. Misra), quoted below:—

Paragraph 3—

"That with regard to the allegations contained in para. 8 of the petitioner's writ petition it is admitted that the counting was being done by clerical staff under the supervision and direction of the Asstt. Returning Officer. The counting agents of the various candidates were permitted to remain at the place where the counting was being done. The procedure was that if any objection was taken to the validity of any ballot paper by any of the counting agents or if the validity of any ballot paper was in doubt the said ballot paper was brought to the decision of the Asstt. Returning Officer who gave his decision after scrutiny of the ballot paper and if he invalidated it, he put down the reasons for the same. In regard to ballot paper whose validity was not disputed by any person the counting assistants used to set them apart in separate bundle for counting. Some counting assistants were made to sit near the table of the Asstt. Returning Officer. They also put rubber stamp of rejection of ballot papers after the Asstt. Returning Officer had given his decision. This was done with a view to expedite the counting. The other allegations of this paragraph are incorrect."

Testimony of petitioner's witnesses mentioned above is supported by the evidence of Respondent No. 1's witnesses named above regarding the procedure followed in counting and scrutiny of the ballot papers and the rejection of the doubtful ballot papers by A.R.O. (A. S. Misra).

83. It is clear that the decision on the doubtful ballot papers was given by the A.R.O. himself in respect of those which were objected to by the counting agents and the other rejectable ballot papers, regarding which there was no objection, the assistants used to put the scale for rejection after the A.R.O. had given his decision.

In my opinion, the initial of the A.R.O. on the seals giving grounds for rejection is by way of assurance that it was scrutinised by the A.R.O. and that he gave his decision thereon. There is nothing illegal in fixing his initials on the decision. No written objection was made by Rama Nath Misra (R.W. 1) or any one on behalf of Respondent No. 1 so far as counting in the combined office was concerned where votes of Gonda East and Gonda West segments were counted.

There is no substance in the allegation made by Respondent No. 1 that there was no scrutiny or decision by A.R.O. regarding the doubtful ballot papers.

84. The other allegation of Respondent No. 1 is that the counting staff not only did not discharge their duties properly, but some of them abused the opportunity and acted in the interest of the petitioner, as they were under the influence of Raja Sahib Mankapur.

Rama Nath Misra (R.W. 1) has stated that Raja Sahib of Mankapur visited the counting room twice and he went inside the room once with him. He further says that Raja Sahib was not stopped from entering the room, but on the contrary he was greeted by the constables at the gate and inside the room by some of the counting clerks.

Mujtaba Husain (R.W. 2) says that on each of the two counting days, Raja Sahib, Mankapur had also come to the counting hall and those working in the counting hall as counting clerks or counting supervisors saluted him.

In his cross-examination, he says that he did not salute the Raja Sahib and he could not say about the counting clerks at this table whether they saluted him or not.

Sheo Bahadur (R.W. 3) says that he had seen Raja Sahib Mankapur and and Thakur Baldeo Singh in the counting hall.

Achhutanand Tripathi (R.W. 4) also speaks of having seen Raja Sahib Mankapur in the counting hall on 27th February, 1962 and 28th February 1962. He asserts that Raja Sahib Mankapur did not come in the counting hall, as he was in Gonda North Shamiana as counting agent of Naurang Singh, where the votes of Gonda North Segment were being counted on 27th February, 1962.

Parmanand Agnihotri (R.W. 6) and Bhagwati Prasad (R.W. 14) also say that they saw Raja Sahib Mankapur visiting the counting hall. As against this there is evidence of V. B. Bhadkamkar (P.W. 2), who asserts that Raja Sahib Mankapur did not come in the counting hall.

He is corroborated by Bahadur Singh (P.W. 5) and Ram Newas (P.W. 6).

Raja Raghvendra Pratap Singh was the Assembly candidate from Mankapur. Mankapur segment was counted on 28-2-1962. It is highly improbable that he will leave his own segment while the counting of his votes was on and come to the combined office on 28-2-1962 when during the counting of Gonda West Segment.

According to V. B. Bhadkamkar (P.W. 2) Raja Sahib was in the Shamiana as agent of Naurang Singh where Gonda North was being counted on 27-2-1962.

The evidence of Respondent No. 1's witnesses is directly contradictory by the affidavit Ex. P. 136 filed by A. S. Misra in the Writ Petition. Para. 5 is quoted below:—

"That with regard to the allegations contained in para. 10 of the petitioner's writ petition it is stated that no unauthorised person was permitted to remain inside the place where the counting was being done. It is correct that the place was a bit crowded. It is quite incorrect that any Government staff working there was under the influence of Raja of Mankapur or Raja of Mankapur was freely moving or talking aside the counting staff. The other allegations of this para are also denied".

85. Rama Nath Misra (R.W. 1) has stated in paragraph 15 of his deposition that when the ballot boxes were supplied at the counting tables, the counting clerks separated the Assembly votes of pink colour and Parliamentary votes of white colour. Then they put ballot papers into the trays of the candidates which they considered valid and the ballot papers which they thought rejectable were taken to the table of the A.R.O. The votes which the counting clerks considered as valid were never taken to the A.R.O. and that it was impossible for the country agents to see in that case as to what type of papers the counting clerks were taking as valid votes. The counting agents could not see as to what was going on on the tables.

In his cross-examination, a direct question was put to Rama Nath Misra (R.W. 1) in the following form:—

Question:—Is it a fact that you did not make any complaint on 27th or 28th February 1962 to A.R.O. about the counting of Gonda East and

Gonda West respectively about wrongful acceptance of votes and wrongful rejection of votes?

The answer given by Rama Nath Misra (R.W. 1) was as follows:—

"I did not make any complaint in writing to the A.R.O. about the ballot papers which the counting clerks included as valid votes for any particular candidate although they were obviously rejectable due to multiple voting because such ballot papers never reached the table of the A.R.O. for any scrutiny. The counting agents had no opportunity to carefully watch as to what was going on on the tables of the counting clerks. I did express my apprehensions about the correctness of the counting which was not being checked by counting agents because of there being no facility to do so. Unless I would have seen anything myself. I could not make such a serious complaint. I could not possibly reach the counting tables due to congestion and therefore I could not see as to what was going on the counting table".

It is clear from his answer that he had no personal knowledge if rejectable votes due to multiple marks were kept in the valid votes of the petitioner or any other candidate.

83. Respondent No. 1 as well as the petitioner have examined some of the counting clerks and also counting supervisors who were engaged in counting the votes of Gonda East and Gonda West Segments in the combined office on 27-2-1962 and 28-2-1962.

Mujtaba Husain (R.W. 2) was the counting supervisor at Table No. 16. He says that before the counting commenced, A.R.O. explained the rules. In para 8 of his deposition, he asserts that he and the other two counting clerks at his table did not do any wrongful act in connection with the counting on account of the alleged influence of Raja Sahib, Mankapur.

In paragraph 9 of his deposition, he admits that the work of sorting included the work of deciding which ballot papers were doubtful and were to be put in the tray of rejectable ballot papers. He also admits that while these two counting clerks were engaged in their sorting work, he used to watch their work to see that no mistakes were committed. Only once or twice he found one or the other counting clerks committing a mistake or two which he immediately corrected.

He asserts that form No. 16 (Ex. R. 188/1) in respect of polling station 16 was taken to the Tahsildar by Bajrang Lal. The corrections in part II of the above form were made in the presence of Tahsildar and signed by Bajrang Lal.

From the above evidence, it is clear that invalid votes were not placed in the bundles of valid votes of any candidate and there was rechecking after the valid votes and rejected votes were put in bundles.

87. Sheo Bahadur (R.W. 3) was the supervisor at Table No. 2. In paragraph 7 of his deposition, he has made it clear that he watched the two counting clerks whether they were sorting correctly or not and whether any one was putting up disturbance in their work or not. He further says that if and when any mistakes were committed by the counting clerks and detected by him, he used to get such mistakes rectified.

He further admits in paragraph 8 of his deposition that he acted fully in accordance with the prescribed instructions and rules laid down as instructed by the A.R.O.

In paragraph 10 of his deposition he makes it further clear that all the decisions of the A.R.O. on the doubtful ballot papers and form No. 16 used to be filled in by him and the work of taking the ballot paper packets and the Form No. 16 was also done by him. He further says that the work of counting was completed when a supervisor had taken the ballot paper packets and the Form No. 16 to the Tahsildar for checking and rectification after checking of any error, if found. Thereafter, when supervisor returned to his counting table, the ballot boxes of another polling stations were brought in to that table.

88. Achhutanand Tripathi (R.W. 4) was the counting clerk at Table No. 11. In Para 14 of his deposition he says that to his knowledge, there was no complaint made by any of the counting agents of wrong sorting and counting.

He asserts "we did not make any wrong sorting and counting intentionally or dishonestly".

Bhagwati Prasad (R.W. 14) was the counting agent of Gomti Prasad Yadav, a candidate of the Socialist party for Assembly seat from Gonda East Segment. He was present at the counting in the combined office on 27-2-1962. He was in charge of tables 1, 2, 3.

In paragraph 5 of his deposition, he states that he was watching the sorting and counting being done by the counting clerks and the supervision by the supervising clerks in respect of ballot papers of both Parliament and Assembly Segments.

In paragraph 10 he says that to his knowledge, the counting clerks on counting tables 1, 2, 3 and the supervisor on the said tables did not commit any mistake in sorting and counting and supervision of the ballot papers.

89. Dashrath Prasad Shukla (P.W. 4) was counting supervisor at table No. 9 when the ballot papers of Gonda East and Gonda West segments were counted in the combined office on 27-2-1962 and 28-2-1962. He says that before the commencement of counting, A.R.O. instructed the counting clerks orally how to proceed and that they were to do the work carefully. If any counting agent raised any objection about a ballot paper, it was placed forthwith in the tray of doubtful ballot papers. In this he is corroborated by P.W. 6.

In paragraph 7, he is explicit that the work of sorting was being done very carefully. The doubtful ballot papers, he himself took to A.R.O., who examined them and handed him over the ballot papers which he declared valid. The other ballot papers, he gave to his assistants, who were sitting near his table for affixing the seals. Thereafter, the A.R.O. used to initial the seals and then give them to him. He waited at the table of the A.R.O. till the above process was completed. On receiving the valid ballot papers as well as rejected ballot papers, he returned to his table. He then placed the rejected ballot papers in the tray of "Rejected Ballot Papers" and then distributed the valid ballot papers to the tray of the respective candidates in whose favour it was declared valid.

He was given ballot boxes of polling stations Nos. 25, 41, 57, 73 on the 2nd, 3rd, 4th and 6th round.

He was also counting supervisor of Gonda West Assembly Segment, when this counting took place on 28-2-1962 in the same room. He was at the same table No. 9. He counted the ballot papers of polling stations Nos. 9, 25, 41, 57 and 73 of Gonda West constituency. He says that the same procedure of counting was observed as was done in the counting of Gonda East Segment (*vide* para 10).

In paras 8 and 9 of his deposition, he has given the details of the further steps taken by him for completing the counting as quoted below:—

Para 8. "It used to take about 1½ hours to complete the counting of one polling station in the manner stated above. After coming back to my table, the valid votes were counted in the packet of 50 each of different candidates respectively. I prepared the bundles of the rejected votes also into the packets of 50 each. After completing the counting of one polling station, the entries in Part II of Form No. 16 was made forthwith for that polling station. The entries in 2nd column in part II of form No. 16 depicted the figures are in my handwriting. In Ex. P. 108/1 to Ex. P. 108/5 the entries are made by me."

Para 9. "After completing the entries in form No. 16 I used to go along with the packets of valid votes and rejected votes and handed over to the two officials who were sitting at a table near the table of A.R.O. I waited there for their checking so that I may rectify the mistakes if pointed out by them. They used to check the ballot papers. They used to scrutinise if any votes of other candidates were wrongly put into the bundle. I have made the corrections in Form 16 of polling station No. 9 (Ex. P. 108/1). In the form of polling station No. 25 (Ex. P. 108/2) the corrections have been made by my counting assistant (clerk). In the form of polling station No. 41 (Ex. P. 108/3) the correction is made by me. So also, in the form of the polling station No. 57 (Ex. P. 108/4). The correction in the form of polling station No. 73 has been made by my associate. I cannot say whether these

corrections were made by me or by my associates at our instance or at the instance of the checking authority".

It is clear from his evidence (*vide* para 3) that 16 ballot boxes of polling stations 1 to 16 were issued at each round for the 16 counting tables. When one round of counting was complete, the next 16 polling stations were taken up till all the polling stations were completed.

90. Ballot papers (Ex. P. 55/1 to Ex. P. 55/63) of polling station 41 of Gonda East Segment were shown to him, and he asserts that it was not possible for him to have counted 63 ballot papers as valid votes for the petitioner which had multiple marking on them.

Ballot Papers (Ex. P. 68/1 to Ex. P. 68/54) of polling station 57 of Gonda East were shown to him. He is definite that it was impossible that he would have passed 54 ballot papers as valid votes for Dandekar if they bore multiple marks on them.

Ballot Papers Ex. P. 75/1 to Ex. P. 75/18 of polling station 73 of Gonda East were shown to him and he asserts that it was never possible for him to pass 18 ballot papers with multiple marks as valid votes for Dandekar.

Ballot papers (Ex. P. 86/1 to Ex. P. 86/23) of polling station 25 of Gonda West were shown to him and he stated that he would never have passed ballot papers with multiple marks as valid votes for Dandekar from this polling station.

Ballot papers Ex. P. 89/1 to Ex. P. 89/2 of polling station 41 of Gonda West were shown to him and he stated that he would never have passed ballot papers with multiple marks as valid votes for Dandekar in this polling station. The above ballot papers were held valid for petitioner in the first counting but rejected as "R.M.V." on recount as they were found to contain multiple voting marks.

Similarly, ballot papers Ex. P. 75/19 to Ex. P. 75/25 of polling station 73 of Gonda East were shown to him and he stated that he would not have placed these ballot papers in the tray of doubtful ballot papers had there been a voting mark in the cage of "BULLS" symbol in that.

Ballot papers Ex. P. 89/26 to Ex. P. 89/36 of polling station 41 of Gonda West were shown to him and he says that had there been voting marks in the cage of "BULLS" symbol, he would not have put them in the tray for doubtful ballot papers.

Ballot Papers Ex. P. 95/3 to Ex. P. 95/6 of polling Station 57 of Gonda West were shown to him and he stated that he would not have put into the tray of doubtful ballot papers had there been the voting marks on them in the "BULLS" cage at the time of counting. These ballot papers were rejected at the 1st count by the A.R.O. as there was no voting mark or voting mark in blank area. On the reverse of these ballot papers there is rubber stamp seals "R.N.M." or "R.M.B.A." initialled by the A.R.O. At the recount, these ballot papers were found to have been in the "BULLS" cage. They were held valid for congress by the Returning Officer.

In paragraph 16 of his deposition he asserts that he never acted dishonestly in any way, nor did he put ballot papers with multiple marks as valid votes for Dandekar. He affirms that he was never under any threat of Raja Sahib of Mankapur, nor did he experience any difficulty in discharging his duties on account of rush or overcrowding in the counting room.

He was also counting clerk at the time of recounting. His evidence relating to recounting will be referred to later.

91. Bahadur Singh (P.W. 5) was the counting clerk at table No. 2 both for Gonda East and Gonda West. He says that a written instructions was given to him and A.R.O. also gave oral instructions, and the counting clerks began the counting according to the instructions given to them orally as well as in writing. Whenever he found any ballot paper containing more than one mark, he used to put it in the tray of doubtful ballot papers. The ballot papers which bore no voting mark or voting marks on blank area, he put them in the tray of doubtful ballot paper.

He never counted a ballot paper with multiple marks as a valid vote for any candidate. In this he is corroborated by Respondent No. 1's own witness Bhagwati Prasad (R.W. 14).

Ballot papers Ex. P. 50/1 to Ex. P. 50/33 of polling station 18 of Gonda East were shown to him and he stated that he did not count ballot papers with multiple marks as valid votes for Dandekar.

Similarly, ballot papers Ex. P. 52/1 to Ex. P. 52/112 of polling station No. 34 of Gonda East, ballot papers Ex. P. 64/1 to Ex. P. 64/76 of Polling Station No. 50 of Gonda East, ballot papers Ex. P. 71/1 to Ex. P. 71/34 of polling station 66 of Gonda East were shown to him and he stated that he never counted the above-mentioned ballot papers with multiple marks as valid votes for Dandekar. The above ballot papers were held valid for petitioner in the first counting but rejected as "R.M.V." on recount as they were found to contain multiple voting marks.

Ballot papers Ex. P. 52/113 to Ex. P. 52/121 of polling station 34 Gonda East were shown to him and he stated that he never put the ballot papers bearing one mark in the cage of any candidate into the doubtful ballot papers' tray. He further says that it is impossible that the above ballot papers were rejected for no marks or marks on the blank area with initials of the A.R.O.—had there been a single voting mark in the cage of "BULLS". These ballot papers were rejected at the 1st count by the A.R.O. as there was no voting mark or voting mark in blank area. On the reverse of these ballot papers there is rubber stamp seals "R.N.M." or "R.M.B.A." initialled by the A.R.O. At the recount, these ballot papers were found to have been in the "BULLS" cage. They were held valid for congress by the Returning Officer.

92. Ram Newas (P.W. 6) was the counting clerk at table No. 16 for Gonda East and Gonda West. He corroborates Dashrath Prasad Shukla (P.W. 4) and Bahadur Singh (P.W. 5) that the counting staff was working according to the A.R.O's instructions.

Ballot papers bearing multiple marks used to be kept in the tray of doubtful ballot papers. At the time of the counting of ballot papers, the counting agents of the various candidates saw the sorting of the ballot papers. If any counting agent of any candidate objected to any ballot paper, that ballot paper was also kept in the tray for doubtful ballot papers. He corroborates P.W. 4.

Ballot papers Ex. P. 48/1 to Ex. P. 48/136 of polling station No. 32 of Gonda East, Ballot papers Ex. P. 62/1 to Ex. P. 62/73 of polling station 48 of Gonda East, ballot papers Ex. P. 69/1 to Ex. P. 69/5 of polling station 64 of Gonda East were shown to him, and he stated that it was impossible that he would have counted these ballot papers with multiple marks as valid votes for Dandekar had there been multiple voting marks at the time of counting. The above ballot papers were held valid for petitioner in the first counting but rejected as "R.M.V." on recount as they were found to contain multiple voting marks.

Ballot papers Ex. P. 62/74 to Ex. P. 62/88 of polling Station 48 of Gonda East, ballot papers Ex. 69/6 to Ex. P. 69/7 of polling station 64 of Gonda East were shown to him and he asserted that had there been single mark in the cage of the "BULLS" in the above ballot papers, he would have never put them in the tray of doubtful one. These ballot papers were rejected at the 1st count by the A.R.O. as there was no voting mark or voting mark in blank area. On the reverse of these ballot papers there is rubber stamp seals "R.N.M." or "R.M.B.A." initialled by the A.R.O. At the recount, these ballot papers were found to have been in the "BULLS" cage. They were held valid for congress by the Returning Officer.

93. Hanuman Prasad (P.W. 7) was the counting clerk at table No. 14 on both the days of the counting, i.e., 27th February, 1962 and 28th February, 1962. He also affirms that instructions were issued for observing the procedure of counting and the counting was done according to the instructions. Ballot papers with multiple marks were kept in the tray of doubtful ballot papers. He did not place any ballot paper with multiple marks as valid votes for Dandekar.

Ballot papers Ex. P.60/1 to Ex. P. 60/7 of polling station No. 46 of Gonda East, ballot papers Ex. P. 78/1 to Ex. P. 78/30 of polling station 78 of Gonda East were shown to him and he stated that he did not keep any ballot papers with multiple marks as valid votes for Dandekar. If he had seen multiple

marks on ballot papers at the time of counting, he would have kept them in the tray of doubtful ballot papers. The above ballot papers were held valid for petitioner in the first counting but rejected as "R.M.V." on recount as they were found to contain multiple voting marks.

Ballot papers Ex. P. 78/31 to Ex. P. 78/39 of polling station 73 of Gonda East were shown to him and he stated that if at the time of counting where were single mark in the "BULLS" cage of these ballot papers, he would not have placed them in the tray for doubtful ballot papers. These ballot papers were rejected at the 1st count by the A.R.O. as there was no voting mark or voting mark in blank area. On the reverse of these ballot papers there is rubber stamp seals "R.N.M." or "R.M.B.A." initialled by the A.R.O. At the recount these ballot papers were found to have been in the "BULLS" cage. They were held valid for congress by the Returning Officer.

94. It has been clearly established from the evidence of the abovenamed witnesses, who were engaged as counting staff that they discharged their duties of sorting and counting according to the instructions given to them by A.R.O.

The allegations of Respondent No. 1 that the counting staff were under the influence of Raja Sahib of Mankapur or that through deliberate mischief they counted invalid votes as valid in favour of the petitioner or rejected valid votes, which should have been counted in favour of Respondent No. 1, were made by him to explain away the extraordinary feature revealing at the recounting in very large number of ballot papers from the bundle of petitioner which were counted as valid votes for him at the first count were found there with multiple voting marks by the Returning Officer at the recount.

Similarly, large number of ballot papers which were rejected by the Assistant Returning Officer at the first count for not bearing any voting mark at all or voting marks in blank area, were counted to bear voting mark in "BULLS" cage at the recount and hence were validated for congress by the Returning Officer.

No written objection whatsoever was made by Rama Nath Misra (R.W. 1) election agent of Respondent No. 1. or any one on his behalf so far as counting in the combined office was concerned where votes of Gonda East and Gonda West were counted. Vide Ex. P. 1 dated 28th February, 1962 (Annexure II-A of the petition); Ex. P. 2 dated 28th February, 1962 (Annexure II-C of the petition); Ex. P. 19 dated 28th February, 1962 (Annexure II-E of the petition) and Ex. P. 3 application for recounting dated 28th February, 1962 (Annexure IV).

In none of the above applications, not even in Ex. P. 3, in which Respondent No. 1 has mentioned grounds for recounting, none of the grounds, viz., insufficiency of light, overcrowding, undue influence on counting clerks by Raja Sahib Mankapur, deliberate mischief by counting clerks or failure on the part of the A.R.O. to give decision on the doubtful ballot papers have been raised. At any rate, no objection was made when votes in Gonda East and Gonda West Segments were counted.

In Ex. P. 3, the prayer for recounting was particularly directed in respect of the areas of the Assembly constituency of Gonda North and Mankapur.

95. The result sheets Exs. P.31-A, P.31-B, P. 31-C, P.31D and P.31-E show that at the end of the first counting, Respondent No. 1 obtained a lead of 3451 votes in Gonda East, a lead of 1008 votes in Gonda North, a lead of 4167 votes in Gonda West and a lead of 2824 votes in Mahadeva Segments over the petitioner, while the petitioner got a lead of 13,053 votes in Mankapur, excluding the postal ballots.

It will thus be clear that the maximum lead which the Respondent No. 1 obtained was in Gonda East and Gonda West Segments. This factor further goes to show the falsity of the allegations of Respondent No. 1 that the counting staff through deliberate mischief and through the influence of Raja Sahib of Mankapur acted in favour of the petitioner to the prejudice of Respondent No. 1. Respondent No. 1 produced a number of ballot papers from both Gonda East

and Gonda West segments, which were rejected in the first count, showing instances of wrong markings by the counting staff. They are enumerated below:—

Ex. No.	Ballot Paper No.
R—7/5	221052
R—7/6	221135
R—22/1	178224
R—22/2	178255
R—25	289133
R—26/1	076423
R—30/1 to R—30/11	174(363, 350, 438, 425, 032, 113, 070, 203, 213, 250 & 255).
R—30/12 to R—30/23	174 (254, 244, 212, 171, 138, 071, 062, 053, 466, 355, 335 & 372).
R—34/2 to R—34/11	303 (205, 248, 301, 292, 298, 293, 222, 037, 079 & 202).
R—34/12 to R—34/15]	303 (286, 222, 243 & 188)
R—52/2 to R—52/6	114837, 197905, 045959, 045986 & 045969.
R—53/1 & R—53/2	345282 & 345130.
R—56/4 to R—56/7	029 (275, 192, 200, 162).
R—57/1 to R—57/7	193 (741, 744, 764, 732, 864, 812, 879).
R—71	226347.

I have examined these ballot papers. They were rightly rejected. Only I find that inappropriate seals were used for giving reasons for rejecting them. They do not support the Respondent No. 1's allegation that invalid votes were put in the packets of valid votes of the petitioner or that valid votes of Respondent No. 1 were wrongly rejected on the ground that there were no voting marks in the ballot papers or voting mark was in Blank Area.

96. *Issue No. 2:*—The finding on this issue rests on circumstantial evidence.

It has been established beyond doubt that the sorting and scrutiny of the ballot papers and counting of votes of Gonda East and Gonda West Segments was made properly and conscientiously by the counting staff.

So far as counting of Gonda East and Gonda West Segments were concerned, no written objection was made by Respondent No. 1 or any other candidate in respect of counting. The evidence that oral objection was made by Rama Nath Misra (R.W. 1) is false.

It was only in respect of counting of Mankapur segment that Respondent No. 1 for the first time filed an application dated 28th February 1962 for re-checking (Ex. P.2). This application was made to the A.R.O (SR Misra), who was in charge of the counting of Mankapur Segment at 10.45 p.m.

There are 94 polling stations in this segment. When this application Ex. P.2 was made, counting of large number of polling stations had already been done. This is clear from the order of the A.R.O. rejecting the application (Ex. P.2) for re-examination. The A.R.O. mentions in his order that Respondent No. 1's objection that manipulation had been done in ballot papers was totally false. Even in Ex. P.3 which was the last application filed by Respondent No. 1 for recount, the prayer for recount though was in respect of all the constituency areas, it was directed particularly for the areas of the Assembly Constituencies of Gonda North and Mankapur.

It will be clear from the above that the grievance of Respondent No. 1 at the end of first counting was mainly in respect of Gonda North, and Mankapur Segment and not in respect of Gonda East and Gonda West Segments. At the recount minor errors were detected so far as Gonda North, Mahadeva and Mankapur Segments were concerned.

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The real difference was revealed at the recounting of Gonda East and Gonda West Segments about which there was no complaint prior to the filing of the written statement.

I have prepared a chart of the ballot papers for convenience of reference, which the petitioner says have been tampered with between the dates of the first count and the date of recount.

This chart also shows the change of lead on recount from a lead of 1,576 votes in favour of the petitioner to a lead of 498 votes in favour of the Respondent No. 1.

This chart has been compiled from the figures in Form 16 (Ex. P. 107) of Gonda West and Ex. P.108 of Gonda East Segments and (to some extent) from the special statement Ex. P.26 and Ex. P.27 prepared by the Returning Officer at the time of recounting on the instructions of Deputy Election Commissioner P. S. Subramanian (P.W. 3).

In this chart, prepared from Entries in Form 20 (Ex. P.31) I have shown the entire lead of the petitioner in the first count and how it dwindled in the recount polling station-wise.

STATEMENT SHOWING CHANGE OF

From a Lead of 1576 votes in

To a Lead of 498 in Favour of the

Assembly Segment and Polling Station No	Commencing Lead Of:		Change on Recount in the Case of Leading Lead of				Lead	
	Petitioner Res- pondent		The Petitioner		Respondent			Petitioner Res- pondent
	+	+	+	—	+	—		
(1)	(2a)	(2b)	(3a)		(3b)		(4a)	(4)
1. Entire Constituency at the end of First Counting.	1576	—	—	—	—	—	—	—
2. After Recounting:								
(1) Mankapur Segment all Polling Stations. (94 in number)	1576	—	—	—23	—	—63	1616	—
(2) Mahadeva Segment all Polling Stations (90 in number)	1616	—	—	—24	—	—4	1596	—
(3) Gonda North Segment All Polling Stations (90 in number)	1596	—	—	—40	—	—23	1579	—
(4) Gonda East Segment Polling Station Nos. 1 to 5	1579		+2	—1	+1	—6	1585	—
" 6	1585	—	—	—8	—	—	1577	—
" 7 to 17	1577	—	+1	—3	+1	—2	1576	—
" 18	1576	—	—	—23	—	—	1543	—
" 19 to 23	1543	—	+1	—	—	—3	1547	—
" 24	1547	—	—	—46	+20	—	1481	—
" 25 & 26	1481	—	—	—	—	—2	1483	—
" 27	1483	—	—	—66	+8	—	1409	—
" 28	1409	..	..	—80	+16	..	1313	—
" 29 to 31	1313	..	+1	..	..	..	1314	—
" 32	1314	..	..	—136	..	—1	1179	—
" 33	1179	..	..	—169	..	..	1010	—
" 34	1010	..	..	—111	+8	..	891	—
" 35	891	..	..	..	..	..	891	—
" 36	891	..	..	—9	..	..	882	..
" 37	882	..	..	—30	..	..	852	..
" 38 to 40	852	..	+1	..	..	—2	855	..
" 41	855	..	..	—63	..	..	79	2
" 42	792	..	..	—12	+10	..	770	..
" 43	770	..	..	—26	+5	..	739	..
" 44	739	..	..	—15	..	..	724	..
" 45	724	..	..	—23	..	—2	703	..

LEAD ON RECOUNT

favour of the Petitioner

Respondent No. 1.

Progressive Net Change on Recount in the Lead of:		Remarks.	Votes wrongfully rejected on recount (challenged by the petitioner as tampered with)		Votes wrongfully validated on recount (challenged by the Petitioner as tampered with)		(Progressive) Cumulative Total
The Petitioner + —	Respondent + —		No. of votes	Exhibit P. Nos.	No. of votes	Exhibit P. Nos.	(7a+8a)↓
(5a)	(5b)		(6)	(7a)	(7b)	(8a) (8b)	(9)
..
..		
..	
+ 3*	..	*By lunch time of 10-3-62	..	..	..	..
+9							
+1	..		8	50/1-8			870
..
..	-33		33	51/1-33	..	..	41+0
..	-29		..	..	..	..	..
..	-95		46	45/24-69	23	45/1-23	87+23
..	-93		..	..	..	..	..
..	-167		68	46/1-68	10	46/69-78	155+33
..	-263		82	47/1-82	18	47/83-100	237+51
..	-262		..	..	..	..	..
..	-397		136	48/1-136	1	48/137	373+52
..	-566		169	49/1-169	..	..	542+52
..	-685		112	52/1-112	9	52/113-121	654+61
..	-685		..	..	..	..	..
..	-694		9	53/1-9	..	..	663+61
..	-724		30	54/1-30	..	..	693+61
..	-721		..	..	..	..	..
..	-784		63	55/1-63	..	..	756+61
..	-806		12	56/1-12	10	56/13-22	768+71
..	-837		24	57/1-24	5	57/25-29	792+76
..	-852		14	58/1-14	..	..	806+76
..	-873		22	59/1-22	..	..	828+76

Assembly Segment and Polling Station No.	Commencing Lead of:		Change on Recount in the Case of				Ending Lead of	
	Peti- tioner +	Res- pon- dent +	The Petitioner		Respondent		Peti- tioner	Res- pon- dent
			+	-	+	-		
(1)	(2a)	(2b)	(3a)		(3b)		(4a)	(4b)
Polling Station No. 46	703	—	—67		+1	—	635	—
" " 47	635	—	—43		+5	—	587	—
" " 48	587	—	—73		+16	—	498	—
" " 49	498	—	—51		—	—	447	—
" " 50	447	—	—76		—	—	371	—
" " 51	371	—	—		—	—1	372	—
" " 52	372	—	—14		+3	—	355	—
" " 53	355	—	—10		+3	—	342	—
" " 54 & 55	342	—	—		—	—3	345	—
" " 56	345	—	—45		+8	—	292	—
" " 57	292	—	—54		—	—1	239	—
" " 58 to 63	239	—	—		—	—4	243	—
" " 64	243	—	—5		+1	—	237	—
" " 65	237	—	—34		—	—3	206	—
" " 66	206	—	—34		+2	—	170	—
" " 67	170	—	—		—	—1	171	—
" " 68	171	—	—12		+7	—	152	—
" " 69	152	—	—85		+1	—	66	—
" " 70	66	—	—24		+2	—	40	—
" " 71 & 72	40	—	—2		—	—2	40	—
" " 73	40	—	—15		+6	—	19	—
" " 74	19	—	—58		+13	—	..	52
" " 75	..	52	—22		..	—1	..	73
" " 76 & 77	..	73	..		..	..	..	73
" " 78	..	73	—30		+9	..	..	112
" " 79	..	112	—71		..	—2	..	181
" " 80	..	181	—2		+1	..	..	184
" " 81	..	184	—23		..	..	..	207
" " 82	..	207	..		..	—2	..	205
" " 83	..	205	—13		..	..	..	218
" " 84	..	218	—15		+2	..	..	235
" " 85	..	235	—16		—1	—1	..	250
" " 86 & 87	..	250	—1		..	—2	..	249
" " 88	..	249	—71		+17	..	..	337

Progressive Net change Recount in the Lead of:			Remarks		Votes wrongfully re- jected on recount (challenged by the Petitioner as tem- pered with)		Votes wrongfully vali- dated on recount (chal- lenged by the Petiti- oner as tampered with)		(Progressive Cumulative Total)
The Petitioner +	Respondent + -		No. of votes	Exhibit P Nos.	No. of votes	Exhibit P. Nos.	(7a + 8a)		
(5a)	(5b)		(6)	(7a)	(7b)	(8a)	(8b)	(9)	
—941	67	60/1-67	1	60/68	895+77		
—989	44	61/1-44	7	61/45-51	939+84		
—1078	73	62/1-73	15	62/74-88	1012+99		
—1129	51	63/1-51	..	..	1063+99		
—1205	76	64/1-76	..	..	1139+99		
—1204		
—1221	15	65/1-15	4	65/16-19	1154+103		
—1234	10	66/1-10	3	66/11-13	1164+106		
—1231		
—1284	45	67/1-45	10	67/46-55	1209+116		
—1337	54	68/1-54	..	..	1263+116		
—1333		
—1339	5	69/1-5	2	69/6-7	1268+118		
—1370	34	70/1-34	..	..	1302+118		
—1406	34	71/1-34	2	71/35-36	1336+120		
—1405		
—1424	12	72/1-12	7	72/13-19	1348+127		
—1510	85	73/1-85	6	73/86-91	1433+133		
—1536	25	74/1-25	6	74/26-31	1458+139		
—1536		
—1557	18	75/1-18	7	75/19-25	1476+146		
—1628	58	76/1-58	16	76/59-74	1534+162		
—1649	22	77/1-22	..	..	1556+162		
—1649		
—1688	30	78/1-30	9	78/31-39	1586+171		
—1757	71	79/1-71	..	..	1657+171		
—1760		
—1783	23	80/1-23	..	..	1680+171		
—1781		
—1794	12	81/1-12	..	..	1692+171		
—1811	13	82/1-13	..	..	1705+171		
—1826	16	83/1-16	..	..	1721+171		
—1825		
—1913	71	84/1-71	17	84/72-88	1792+188		

Assembly Segment and Polling Station No.	Commencing Lead of :	Change on Recount in the Case of :				Ending Lead of	
		Petitioner Res- pondent		The Petitioner Respondent		Petitioner Respondent	
		+	+	+	—	+	—
(1)	(2a)	(2b)	(3a)	(3b)		(4a)	(4b)
Gonda West							
Polling Station Nos.							
" " 1 to 13	337	+1	—5	+1	—6	.. 336
" " 14	336	..	—20	+2	..	.. 358
" " 15 to 24	358	+2	—5	..	—9	.. 352
" " 25	352	..	—23	..	..	.. 375
" " 26 to 32	375	..	—1	..	—4	.. 372
" " 33	372	..	—3	+15	..	.. 390
" " 34 to 38	390	+1	—2	+1	—3	.. 387
" " 39	387	..	—1	+4	..	.. 392
" " 40	392	+1	..	..	—2	.. 389
" " 41	389	..	—25	+14	..	.. 428
" " 42	428	..	—24	7	..	.. 459
" " 43	459	..	—10	..	—1	.. 468
" " 44	468	..	..	..	..	.. 468
" " 45	468	..	—8	2	..	.. 478
" " 46 to 52	478	..	—1	..	—2	.. 477
" " 53	477	..	—4	..	—1	.. 480
" " 54	480	..	—8	+1	..	.. 489
" " 55 & 56	489	..	—2	..	—3	.. 488
" " 57	488	..	—2	+4	..	.. 494
" " 58 & 59	494	..	—1	..	..	.. 495
" " 60	495	..	—5	..	—1	.. 499
" " 61 to 65	499	+1	..	..	—3	.. 495
" " 66	496	..	—2	..	—3	.. 494
" " 67	494	..	—1	..	..	.. 495
" " 68	495	..	—5	..	..	.. 500
" " 69 to 86	500	..	—11	+2	—15	.. 498

Progressive Net change on Recount in the Lead Remarks of :—				Votes wrongfully re- jected on recount (challenged by the Petitioner as tam- pered with)		Votes wrongfully vali- dated on recount (chal- lenged by the Petitioner as tampered with)		(Progressive) Cummula- tive Total
The	Peti- tioner	Respon- dent		No. of votes	Exhibit P. Nos.	No. of votes	Exhibit P. Nos.	(7a+8a)
+	—	+	—					
(5a)		(5b)	6	(7a)	(7b)	(8a)	(8b)	(9)
—1912			
—1934				20	85/1-20	2	85/21-22	1812 +190
—1928			
—1951				23	86/1-23	..	..	1835 +190
—1948			
—1966				3	87/1-3	15	87/4-18	1838 +205
—1963			
—1968				4	88/1-4	1838 +209
—1965			
—2004				25	89/1-25	11	89/26-36	1863 +220
—2035				24	90/1-24	7	90/25-31	1887 +227
—2044				10	91/1-10	..	..	1897 +227
—2044			
—2054				8	92/1-8	2	92/9-10	1905 +229
—2053			
—2056				4	93/1-4	..	..	1909 +229
—2065				8	94/1-8	3	94/9-11	1917 +232
—2064			
—2070				2	95/1-2	4	95/3-6	1919 +236
—2071			
—2075				5	96/1-5	..	..	1924 +236
—2071			
—2070				2	97/1-2	..	..	1926 +236
—2071			
—2076				4	98/1-4	..	..	1930 +236
—2074			

97. It has been established from the evidence of Dashrath Prasad Shukla (P. W. 4), Bahadur Singh (P. W. 5), Ram Newas (P. W. 6) and Hanuman Prasad (P. W. 7) that the ballot papers (Exs. P. 55/1 to 63), (Exs. P. 68/1 to 54), (Exs. P. 75/1 to 18), (Exs. P. 86/1 to 23), (Exs. P. 89/1 to 25), (Exs. P. 51/1 to 53), (Exs. P. 52/1 to 112), (Exs. P. 64/1 to 76), (Exs. P. 71/1 to 34), (Exs. P. 48/1 to 136), (Exs. P. 62/1 to 73), (Exs. P. 69/1 to 5), (Exs. P. 60/1 to 67), (Exs. P. 78/1 to 30)—total 769 ballot papers could not have been counted valid votes for the petitioner had there been a second voting mark on these ballot papers.

It is also established from their evidence that ballot papers (Exs. P. 75/19 to 25), (Exs. P. 89/26 to 36), (Exs. P. 95/3 to 6), (Exs. P. 52/113 to 121), (Exs. P. 62/74 to 88), (Exs. P. 69/6 and 7), and (Exs. P. 78/31 to 39)—total 57 ballot papers would not have been marked "R.N.M." or "R.M.B.A." had there existed a voting mark in the "BULLS" cage in those ballot papers at the first count.

There is thus direct evidence in respect of 825 ballot papers to show that some time after the 1st count and before the recount these ballot papers were got at and they had been tampered by placing additional voting marks and voting marks in "BULLS" cage in the ballot papers which had no voting mark at the first count.

98. In the light of the above findings it becomes necessary to examine the circumstances which prompted Respondent No. 1 to make applications Ex. P. 2 and Ex. P. 19 and Ex. P. 3 for re-examination of ballot papers in respect of Mankapur Segment. These applications were submitted at mid-night of 28-2-52 to the Assistant Returning Officer, Mankapur Segment. Ex. P. 3 is for recounting of the entire constituency and the order passed by the Returning Officer (C. M. Nigam) bearing date 1-3-1962 (Ex. P. 42). GONDA NORTH: This Segment has 90 polling stations. Counting took place in a Shamiana on 27-2-1962. The counting was over by about 11 P.M. (Vide P. W. 2, Para 21 of Page 13). The number of votes polled were 37,563. GONDA EAST: This Segment has 88 polling stations. Counting commenced by mid-day and was over by 11 P.M. (vide P. W. 2 para 7).

This is clear from the evidence of V. B. Bhadkamkar (P. W. 2) who has been corroborated by Dashrath Prasad Shukla (P. W. 4), Ram Newas (P.W. 6) and Vijai Bahadur (P. W. 9)—Total number of votes polled were 41,832.

Ram Newas (P. W. 6) has stated that Parmanand Agnihotri (R. W. 6) was one of the counting clerks. He has stated that he had left at about mid-night which would indicate that counting must have been over sometime before mid-night.

Evidence of Muftaba Husain (R. W. 2) in para 10 of his deposition also indicates that the counting of Gonda East was over by 11 P.M.

MAHADEVA: There are 90 polling stations in this Segment. The counting was over by 10 P.M. (Vide evidence of V. B. Bhadkamkar (P. W. 2) para 22, page 13). The total votes polled were 41,033.

GONDA WEST: There are 86 polling stations in this Segment. Counting commenced at about 9 A.M. and finished at about 9 P.M. on 28-2-1962. (Vide evidence of V. B. Bhadkamkar, P.W. 2 para 20 and 22 on page 13 and Dashrath Prasad Shukla P. W. 4, para 12 and 17).

Ram Newas (P. W. 6) says that he had left the counting hall at about 11:30 P.M. on 28-2-1962. This indicates that counting must have been over before 11:30 P.M.

MANKAPUR: There are 94 polling stations in this Segment. Counting of votes in this Segment began at 8 A.M. on 28-2-1962. According to P. W. 2 it commenced from 8 A.M. R. W. 1 gives the time of commencement as 8:30 A.M.

V. B. Bhadkamkar (P. W. 2) has stated that the counting of Mankapur was over by mid-night. This statement is supported by Ex. P. 19 and Ex. P. 20.

Ex. P. 19 (Annexure II-E of the petition) is an application moved by R. N. Misra (R. W. 1) election agent of Respondent No. 1 on 28-2-1962 at mid-night to the Assistant Returning Officer. In para 1 of this application, he mentions about his previous application, which is Ex. P. 2 for recounting and re-checking of ballot papers of Parliament in respect of Mankapur Segment which was going on since 8 A.M.

This application was made to reconsider the previous decision of the A.R.O. on the application Ex. P. 2 which was filed at 10:45 P.M. This application Ex. P.

19 was filed at 12 mid-night. The order on this application passed by the A.R.O. is Ex. P. 20. The relevant portion of the order is given below:—

"I have personally checked and satisfied that the orders of rejection were correctly passed by me on rejected ballot paper. I counted the Utraula Constituency and I and my present counting staff had a rest of 24 hours on 27-2-1962. Thus it is wrong that because of being tired, I have rejected the previous application. Re-counting is now over and I have fully satisfied about the accuracy of totals by re-checking".

The application Ex. P. 19 and the order of the Returning Officer (Ex. P. 20) passed thereon establishes beyond doubt that the counting of ballot papers in Mankapur segment commenced at 8 A.M. and finished by 12 mid-night. R. W. 1's statement that the counting of Mankapur Segment did not finish till 12.45 A.M. is false in the face of the above two documents.

99. Reference was made on behalf of Respondent No. 1 to Ex. P. 16 and Ex. P. 23 to show that the time when counting was completed in Gonda West, Mankapur and Mahadeva Assembly Segments as given by petitioner's witness was not correct.

In Ex. P. 16 para 3, the petitioner has written as follows:—

"counting of votes cast in Gonda West, Mankapur and Mahadeva Assembly Segments began on 28-2-1962 and was completed late at night".

In Ex. P. 23 para 3 the petitioner wrote that the counting in Gonda West and Mahadeva went on until late into the night and finished around midnight.

This is at best an approximate time given by the petitioner and is not of any special significance. The petitioner himself was not present in Gonda from the evening of 28-2-62 till the afternoon of the 1st March 1962.

Moreover it is clear that the number of votes polled in Gonda West was the minimum in comparison to the votes polled in other Segments. This would corroborate the petitioner's evidence that the counting of Gonda West was finished by about 9 P. M.

Therein is no manner of doubt that the counting of Mankapur began at 8 A.M. on 28-2-62 and finished at about mid-night as I have already mentioned in the previous paragraph.

From Ex. P. 31 which is the final result sheet of 34 Gonda Parliamentary Constituency, it is clear that Respondent No. 1 had a lead of 1008 votes in Gonda North and in Gonda East he had a lead of 3451 votes. Thus, as a result of counting on 27-2-62 Respondent No. 1 got a lead of 4459 votes.

On 28-2-62 in Gonda West Respondent No. 1 got a lead of 4167 votes and in Mahadeva he got a lead of 2824. Thus, by the time Gonda West and Mahadeva counting was finished, Respondent No. 1 had got an over all lead of 11,459 votes.

The credibility of evidence of V. B. Bhadkamkar's (P.W.2) testimony in paras 21, 22, 23 of his deposition judged in the light of the above circumstances can not be doubted. For convenience of reference this portion of his evidence is quoted below:—

Para 21. Page 14: "On 28th February, 1962, I was present most of the time in the counting of Mankapur Segment. During the counting of Mankapur Segment at about 9 P.M., the position was that the large majority of about 15000 votes which the petitioner had in that Segment had been reduced by 2,500 approximately in the round of 16 (sixteen) polling stations the counting of which at that time was nearing end. After the first four round i.e. upto the 64 polling stations of the Mankapur Segment had been counted, the lead of the Petitioner over Respondent No. 1 in this Segment was about 15,000. In the fifth round, i.e. from Polling Stations 65 to 80, this lead had been reduced by about 2500 votes. The time when the fifth round was nearing its end was about 9 P.M. At about this time the Respondent No. 1 came into the Shamiana where the counting of Mankapur Segment was in progress. About 15 minutes later, the Returning Officer Sri Nigam and the Assistant Returning Officer Sri Jauhari also came to the Shamiana. Sri Jauhari was A.R.O. of the Parliamentary Constituency as a whole. The A.R.O. of the Mankapur Segment was Sri S. R. Misra.

Para 22, page 14: "These officers and the Respondent No. 1 were standing together inside the *Shamiana*. After that Sri Nigam walked around to the tables where the counting was going on. Sri Jauhari walked upto S. R. Misra and asked him to expedite the counting of the Parliamentary votes so that the result could be declared. Sri Nigam himself did not speak to Sri S. R. Misra directly".

Para 23, page 15: "As I have said earlier, the fall in the petitioner's lead from polling stations 64 to 80 was about 2500 votes and if it continued to fall in the same manner for the remaining polling stations, the petitioner's lead in this segment would not have been enough to exceed the lead of the Respondent No. 1 in the other four segments. About this time, the counting of the sixth round i.e., of polling stations 81 to 94 was beginning and as the ballot papers were taken out of the ballot boxes and were being unfolded, indications that appeared were, that both the petitioner and Respondent No. 1 would be polling nearly equal number of votes in these polling stations of the last round. About 9-45 P.M. the Returning Officer and the Asstt. Returning Officer had left the *Shamiana*. Sometime later, the respondent No. 1 also left the *Shamiana*."

100. The figures given by P.W. 2 about the lead of the petitioner in Mankapur Segment from time to time as the counting progressed can easily be verified from the figures given in Ex. P. 31 which is the final result sheet polling station-wise in Form No. 20 of Mankapur Segment. This on verification is found to be nearly correct. Petitioner's lead was at first of 15571 and later it was 2134.

The evidence of V. B. Bhadkamkar (P.W. 2) of the effect that at about 9 P.M., the Respondent No. 1 came to the *Shamiana* where the counting of Mankapur Segment was in progress and that about 15 minutes later the R.O. (C.M. Nigam) accompanied by A.R.O., Sri Johri came there and that Sri Johri walked upto S. R. Misra who was the Assistant Returning Officer of this segment and asked him to expedite the counting of Parliamentary votes so that result could be declared, must be accepted as true, as the best evidence to rebut him would have been of Respondent No. 1 himself and C. M. Nigam and Sri Johri.

Respondent No. 1 has not gone in witness box nor has been examined C. M. Nigam or Sri Johri who was the A.R.O. for the Parliamentary constituency as a whole.

There is further evidence of V. B. Bhadkamkar (P.W. 2) to the effect that at about 9-45 P.M. the Returning Officer and the Assistant Returning Officer (Sri Johri) had left the *Shamiana* and sometime later Respondent No. 1 also left the *Shamiana*. About this time the counting of the 6th round i.e. of polling stations 81 to 94 was commenced and as the ballot papers were taken out of the ballot boxes and were being unfolded, indications that appeared were that both the petitioner and Respondent No. 1 would be polling nearly equal number of votes in the last round and the lead of the petitioner maintained the lead which he had after the counting of polling stations 64 to 80, must be accepted as true.

101. It has been admitted by Rama Nath Misra (R.W. 1) in his cross-examination—para 67 and 72 that at the time when he moved the application Ex. P. 2 and Ex. P. 19, indications were there that Respondent No. 1 was losing in Mankapur segment although he is reluctant to give the figures by which the petitioner was leading.

He stated that at about 10-30 P.M. on 28th February 1962 that the petitioner was leading in Mankapur segment over Respondent No. 1 but the exact figures were not available to him. The same was the position at 11-30 P.M. I cannot believe R.W. 1 when he says that counting agents did not know the figures. Counting Agents must have been noting the number of votes polled by their candidates at the end of counting of each polling station when the counting supervisor entered the figures in form No. 16. He admits in his cross-examination that C. M. Nigam came to the Mankapur *Shamiana* between 10-30 and 11 P.M.

102. From the evidence referred above, it is abundantly clear that when Respondent No. 1 found he faced defeat in the election, the application Ex. P. 2 was moved at about 10-45 P.M. The grounds raised in this application were frivolous and the application was consequently rejected by the Assistant Returning Officer at 11-30 P.M. (vide Ex. P. 18). Then another application was moved by Respondent No. 1 at mid-night on 28th February 1962 (Ex. P. 19). This also was rejected by the A.R.O. (vide Ex. P. 20). In this order Ex. P. 20 the A.R.O.:

specifically mentions that the counting is now over and he had fully satisfied the accuracy of the totals by rechecking.

It is further established that by mid-night of 28th February, 1962 counting of all the segments were over excepting the postal ballots and the over all result was that the petitioner was leading by 1603 votes. (The total number of postal ballot papers were 53 only which later was found to be 40 in favour of Respondent No. 1 and 13 favour of the Petitioner.

103. Ex. P. 3 is the application for recounting dated 26th February, 1962 signed by Respondent No. 1 himself. It is obvious that it was prepared immediately after the counting of Mankapur segment was over.

Ex. P. 42 is the order of the Returning Officer bearing date 1st March, 1962 time 12-25 A.M. by which the declaration of the result of election was postponed to 1st March, 1962, at 11 A.M. The reasons for postponement given in this Ex. P. 42 were as below:—

- (i) Counting of votes of two constituencies Tulsipur and Mankapur is continuing and likely to continue for two or three hours more.
- (ii) It is now 12-25 A.M.

In my opinion, the above order of the Returning Officer was unwarranted and the grounds alleged therein were baseless inasmuch as the counting of Mankapur Segment was over by mid-night of 28th February, 1962 so far as Gonda Parliamentary constituency was concerned.

Ex. R. 4 is a letter to the Commissioner of the Division by the R.O. He mentions that counting of Tulsipur and Mankapur Assembly constituency finished between 4 A.M. and 1 A.M. respectively on 1st March, 1962.

According to the Returning Officer, Mankapur counting finished at 1 A.M. in the night between 28th February and 1st March, 1962. This a mis-statement as the counting of Mankapur Assembly constituency finished by mid-night on 28th February, 1962.

In my opinion, in the circumstances mentioned above, there was none nor could there have been any justification for the Returning Officer to postpone the declaration of the result till 1 A.M. of the 1st of March 1962 as in another 1½ or 2 hours all the accounts could have been completed and the result declared. In fact, the result of the Mankapur Assembly segment was declared at about 1-30 or 2 A.M. in the night between 28th February and 1st March 1962 (*vide* Rama Nath Misra R.W. 1's deposition para 36).

There is no reason why the same step could not have been taken in respect of the Parliamentary constituency. The result could have been declared by the Returning Officer himself or by the A.R.O. (R. B. Johri), who was present at the election at 1 A.M. (*vide* statement of V. B. Bhadkamkar P.W. 2 para 32 page 19 which is corroborated by the endorsement of R. B. Johri on Ex. P. 43).

There was a definite design in the action of R. O. in postponing the declaration of the Parliamentary constituency.

Another very significant factor worth mentioning in this connection is that the Returning Officer had attended the *Shamiana* at 9-45 P.M. where Mankapur segment was being counted, and by then it was apparent that Respondent No. 1's chances of winning the election had become bleak.

The presence of Returning Officer in the *Shamiana* is also admitted by R.W. 1, but he says that the Returning Officer visited at about 10-30 or 11 P.M. This statement is not correct. Had the Returning Officer been present at the Mankapur counting place between 10-30 and 11 P.M., the application Ex. P. 2 would surely have been moved before him and not before A.R.O.

104. The Returning Officer left Mankapur counting place at about 9-45 P.M. on 28th February, 1962.

It is strange how could he have known at 12-25 A.M. that Mankapur counting was to continue for 2 or 3 hours more, specially when the facts were otherwise and the counting was over at about 12 mid-night. The Returning Officer himself did not care to visit the Mankapur counting place again and to verify the position.

105. Judging from the entire circumstances, it will be reasonable to conclude that the initiative for the R.O.'s order postponing the declaration of the result

must have come from an interested person, namely Respondent No. 1, as he had known by that time that he had lost the election. This order (Ex. P. 42) of the Returning Officer postponing the declaration of the result was clearly against the provisions of Rule 60 (Conduct of Election Rules 1961) and the notification (Ex. P. 14).

There is evidence of Katyani Dutt (P.W. 10) to the effect that he had seen the Returning Officer at 9.45 p.m. coming out of the *Shamiana* "meaning where the Mankapur votes were being counted" and going to his residence. About 10 minutes later, he saw Respondent No. 1 also coming out of the *Shamiana* and taking seat in his own car.

Katyani Dutt (P.W. 10) further says that at about 12.15 A.M. he learnt that some application of Respondent No. 1 to stop counting has been dismissed. It was also known that the counting had finished. He went in his car to the bungalow of the Returning Officer. There he learnt that Respondent No. 1 was with the Returning Officer and about 5 minutes later the Respondent No. 1 came out of the bungalow of the Returning Officer and drove away in his car. Thereafter, Katyani Dutt (P.W. 10) sent in information through the peon that counting was over and the result be declared. The peon returned and informed him that the Returning Officer would shortly be going to the counting place.

Katyani Dutt (P.W. 10), thereafter, came back from the bungalow of the Returning Officer. He further states that the Returning Officer did not come and learnt that he has sent an order for the postponement of the declaration of the result for the next day.

106. The evidence of this witness has been criticised at great length and it has been suggested from his cross-examination that he had been acting as a counting agent of Capt. Ram Garib and that he could not have gone to the *Shamiana* where Mankapur votes were counted.

Ex. R. 159 and Ex. R. 160 are appointment form of counting agents.

Ex. R. 160 contains 6 names. Katyani Dutt (P.W. 10) has admitted his signatures at two places in this form. The signature of the sixth counting agent in this Exhibit is of Satya Narain Pande.

Ex. R. 159 is the appointment by Capt. Ram Garib of another counting agent Din Dayal Karoon. The second signature of Din Dayal Karoon is counter-signed by A.R.O. (A. S. Misra).

In Ex. R. 160, however, the second signatures of the counting agents have not been countersigned by the Returning Officer.

This would go to show that the counting agents named in Ex. R. 160 did not affix their signatures in the presence of the Returning Officer. This is further established by the fact that admittedly Satya Narain Pande did not work as the counting agent of Capt. Ram Garib, although his signature is there in Ex. R. 160.

More signatures of election agents in Ex. R. 160, therefore, do not prove that they and in particular Katyani Dutt (P.W. 10) actually worked as counting agent of Capt. Ram Garib.

Katyani Dutt (P.W. 10) was recalled and when he was asked about his signature in Ex. R. 160, he stated on oath that he signed it 6 or 7 days before the counting. He has not signed the declaration in the presence of the Returning Officer and he stated that he did not act as a counting agent of Capt. Ram Garib.

In the circumstances I do not see any reason why he should not be believed.

In Ex. R. 160, the numbers 14, 15 and 16 appear against the name of Katyani Dutt (P.W. 10). It is not known who wrote them. The suggestion from the Respondent No. 1's side was that he was placed at tables 14, 15 and 16.

107. Parmanand Agnihotri (R.W. 6) in para 1 of his deposition has stated that he was allotted to tables 13, 14 and 15 during the counting of Gonda West segment. Capt. Ram Garib was the Assembly candidate from that segment. If the noting of figures in Ex. R. 160 meant the number of the table, then Parmanand Agnihotri (R.W. 6) was the best person to speak about Katyani Dutt (P.W. 10)'s presence, but no question was put to him by the Respondent No. 1's counsel about the presence of Katyani Dutt (P.W. 10).

The best evidence in rebuttal would have been that of C.M. Nigam and Respondent No. 1 but they have not entered the witness box to state that Respondent

No. 1 visited C. M. Nigam soon after leaving the Mankapur counting place at about 4-45 P.M.

108. The next point for consideration is about the safe custody of the ballot papers during the period between the first and the second counting i.e. from 1st March 1962 to 9th March 1962.

Rule 60 of the Conduct of Election Rules, 1961 enjoins that—

"The returning officer shall, as far as practicable, proceed continuously with the counting and shall, during any intervals when the counting has to be suspended, keep the ballot papers, packets and all other papers relating to the election sealed with his own seal and the seals of such candidates or election agents as may desire to affix their seals and take sufficient precaution for their safe custody during such intervals."

The Returning Officer after issuing his order Ex. P. 42 did not himself go to the counting place nor did he issue any direction about the safe custody of the ballot papers when he directed postponement of further counting in the night between 28th February, 1962 and 1st March 1962 at about 12-25 A.M.

Non-compliance of the provisions of Rule 60 in the above connection also leads to the inference that the counting of Mankapur segment was already over at 12 midnight as asserted by the petitioner.

109. The Returning Officer by his order dated 1st March 1962 (Ex. P4) which he passed at about 2-30 P.M. allowed the application Ex. P.3 filed by Respondent No. 1 for re-examination and recounting of votes. This order he passed after hearing both the parties and the objection raised by the petitioner that he (Returning Officer) had no jurisdiction to entertain this application for recount as he could not review the decision of the Assistant Returning Officer, who did the counting initially. This objection was over-ruled with the words "Rule 63 of the Conduct of Election Rules 1961 is a complete reply to this objection".

Rule 63(4) of the Conduct of Election Rules 1961 lays down that every decision of the Returning Officer under sub-rule (3) shall be in writing and contain the reasons thereof.

The Returning Officer has not given any reasons in the above order for allowing the application (Ex. P. 3) for recount filed by Respondent No. 1. He has merely stated:—

"Under the circumstances mentioned in the application, I think it fair and proper to allow the application for a recount. The date, time and place of recount shall be intimated to all the contesting candidates shortly".

There is nothing in the order to show that before passing the order, he had made any enquiry about the allegations mentioned in Respondent No. 1's application (Ex. P. 3). In fact, the ballot papers of Mankapur segment were rechecked by A.R.O. on previous applications (Ex. P. 2 and Ex. P. 19) made by Rama Nath Misra (R.W. 1) on behalf of Respondent No. 1 and he had rejected them.

The order of the Returning Officer allowing Respondent No. 1's application for recount was not only arbitrary but illegal.

There is, however, no provision in the Representation of Peoples' Act (hereinafter called "the Act") to deal with such a situation to enable an aggrieved party to seek redress against such an order.

110. It has already been stated that the order for recount (Ex. P. 4) was passed by the Returning Officer on 1st March 1962 at 2-30 P.M. Petitioner (P.W. 1) had made a request for safe custody of the ballot papers and the Returning Officer agreed to do so, but on such orders were received by the A.R.O. till 7 P.M. on 1st March 1962 [vide V. B. Bhadkamkar (P.W. 2) Para. 37].

Krishna Madho Saran (R.W. 20), who is the Treasury Officer, Gonda, has stated that he received the Returning Officer's order (Ex. R. 5) for safe custody at 8-50 P.M.

Ex. R. 5 is a short order containing the following words:—

"The bags containing ballot papers of No. 33 Balrampur and No. 34 Gonda Parliamentary constituencies be kept in the Double Lock till such time as they are required for recounting".

This order is addressed to Treasury Officer and is dated 1st March 1962.

111. It is not disputed that the bags containing ballot papers of Balrampur Parliamentary constituency and 24 Gonda Parliamentary constituency were deposited in the Armoury Strong Room by about 3-45 P.M. on 1st March 1962. Slips of papers have been produced by the Treasury Officer (R.W. 20) from the respective A.R.O.'s to show that the bags of their segments were deposited in the Armoury Strong Room. There is no such paper in respect of Mahadeva segment (*vide* Ex. R. 2) and endorsements on Ex. P. 118/C.

Although order (Ex. R. 5) passed by the Returning Officer was very specific to the effect that the bags containing the ballot papers of both the Parliamentary constituencies were to be kept in the Treasury Double Lock for safe custody, still the Treasury Officer kept them in the Armoury Strong Room.

It was incumbent on the Treasury Officer to make entries in the regular register of valuables maintained by him for depositing articles in the Treasury Double Lock, but he did not comply with the Treasury rules. The original register of valuables was sent for. It does not contain any entry of deposit of the ballot paper bags. The T.O. produced a manuscript register Ex. R. 211 which he had prepared for the deposit of the bags. This manuscript register he opened without obtaining any order from the District Magistrate, who was the Returning Officer and in charge of the Treasury. Even then this manuscript register was not opened on 1st March 1962. The Treasury Officer has made an endorsement on the 1st page of this manuscript register Ex. R. 211 that it was opened on 5th March 1962, yet it contains the entries dated 1st March 1962 in respect of the deposit of the bags against which the A.R.Os. signed. Obviously these entries have been antedated.

112. The Treasury Officer in order to justify his action now calls this Armoury Strong Room as "Triple Lock Room" as if it were under the control of the Treasury Officer, in the same manner as the Treasury Double Lock.

There has been extensive cross-examination of Kali Chandra Johri, Nazir (R. W. 19) and Krishna Madho Saran, Treasury Officer (R.W. 20), which show that this Armoury Strong Room was under the control of the Nazir, and the Treasury Officer had nothing to do with the custody of the arms [*vide* deposition of Krishna Madho Saran (R.W. 20) paras. 31 and 85]. Reference to the relevant portion of the evidence of the above witnesses will be made hereafter when dealing with the question of the safe custody of the bags.

113. There is evidence on record to show that from the 1st March, 1962 to the morning of 5th March, 1962, there were four persons posted on behalf of the petitioner to keep watch on the Armoury Strong Room, where the bags were kept locked (*vide* evidence of V. B. Bhadkamkar, P.W. 2, para. 41).

This is corroborated by the entry in the return of election expenses Ex. 138 equal to Ex. R. 128 filed by the petitioner, which show that no expenses for the watch-man were incurred after 5th March, 1962.

The contention on behalf of Respondent No. 1 that petitioner's watch-men continued to be posted till before the recount, is without foundation.

Evidence of Rama Nath Misra (R.W. 1) in support of the above contention is only hearsay. He says that he heard this from Ram Kumar Azad.

114. Krishna Madho Saran, Treasury Officer, (R.W. 20) sought to justify the keeping of the bags containing the ballot papers of the two constituencies in the armoury strong room by saying:—

"Because there was not enough space in the double lock room and I consider the Triple Lock Room also Double Lock".

This is merely an excuse as under no such circumstances can a triple lock room be confused with Treasury Double Lock. The shortage of space in the Treasury Double Lock alluded to by the Treasury Officer is also an excuse to support his unauthorised act of placing the bags in the Armoury Strong Room. The Treasury was inspected by me on 14th December 1963. It is large enough to accommodate all the bags. In fact the bags containing ballot papers were moved from Armoury Strong Room to the Treasury Double Lock on 8th March 1962.

The endorsement (Ex R 6) under the signature of C. M. Nigam, District Magistrate, Gonda, dated 7th March 1962, who was also the Returning Officer, on the proposal made by R. B. Johri for shifting the bags from the Armoury Strong Room to the Treasury Double Lock shows that the Returning Officer throughout was aware of the fact that the bags containing the ballot papers of the two constituencies were not kept in the Treasury Double Lock although ordered by him, but were kept in the Armoury Strong Room on 1st March 1962.

In the endorsements made by the Treasury Officer on the reverse of Ex. R. 6 and on the endorsement Ex. P. 118/E, P. 118/G, P. 118/F, the presence of District Magistrate has been mentioned by the Treasury Officer when the bags were shifted from the Armoury Strong Room to the Treasury Double Lock on 8th March 1962. Still the District Magistrate called for no explanation from the Treasury Officer why his order Ex. R. 5. was contravened.

This leads to an irresistible inference that this was done either with his connivance or with his consent, as there is nothing on record to show that he had taken any steps against the Treasury Officer when his orders Ex. R. 5 were not obeyed.

115. The Treasury Officer's plea that he kept these bags in the Armoury Strong Room for want of space in the Treasury Double Lock is false. In fact if the bags containing the ballot papers of the two constituencies had been kept in the Treasury Double Lock, it would have been incumbent on him to make relevant entries in the regular register of valuables and that would have prevented the free movement of bags from the Treasury Double Lock, as whenever any valuable is brought in or taken out of the Treasury Double Lock, the relevant entry is to be made and the corresponding serial number of the register is marked on the article. This is intended to prevent the removal of any other article except what has been brought in by the depositor.

The Treasury Officer says that this procedure is followed in the ordinary course, but it was not adopted when he was ordered to deposit these bags in the Treasury Double Lock. He has admitted that in this case there has been an irregularity.

116. The Treasury Officer is trying to cover up his irregular and irresponsible acts by telling lies as will be clear from the following reference to his evidence. In para. 33 of his deposition, he states:—

"If any such occasion had arisen on account of which I would have been compelled to keep valuables, documents and other articles in the Triple Lock Room, I would have entered them in the prescribed Treasury Double Lock Register of valuables, and I would have made a note against the entry that the valuables or the articles are kept in the Triple Lock Room, and when the said valuables or articles are transferred back to the double lock room I would score out that entry in the register of valuables".

Thus, according to the Treasury Officer himself, even though he was compelled through want of space in the Double Lock, he kept the ballot papers bags in the Triple Lock Room, it was his duty to enter them in the prescribed Treasury Double Lock Register in the manner stated by him above. But he glaringly failed to comply with the rules. The only conclusion which can be drawn under the circumstances is that any entry in the Treasury Double Lock Register prescribed for valuables would hamper free movement of the bags and, therefore, they were not entered in this register.

Even on the 1st of March 1962, he did not prepare this manuscript register Ex. R. 211, although the bags containing the ballot papers were already deposited in the Armoury Strong Room. This manuscript register was not prepared till 5th March 1962. The Treasury Officer thought it wise not to delay any further. The Chief Election Commissioner was coming to Gonda to watch the recounting of votes of Balrampur Parliamentary Constituency.

117. Krishna Madho Saran (R.W. 20) was specifically asked why he did not prepare the manuscript Ex. R. 211 on 1st or 2nd or 3rd March 1962. He gave an evasive reply that he and his clerks were busy on 1st March 1962 and it was not possible for him to open the Triple Lock and hence he could not prepare the register.

Even when these ballot paper bags were brought and kept into the Treasury Double Lock Room they were not entered in the prescribed double lock register of valuables.

In para. 29, R.W. 20 (page 18) says:—

"All articles, valuables and documents which come inside the Treasury Double Lock have got to be entered in that register".

In para. 30, R.W. 20 admits:—

"If any article, document or valuables comes into the Treasury Double Lock and the same is not entered in that register it would be irregular and against the rules, and these entries have to be made serially day to day".

In para. 31, R.W. 20 admits:—

"So far as the Treasury Double Lock Room is concerned I am governed by the Treasury Manual, Revenue Manual Part II, Resource Manual, F.H.B. Vol. V Part I, Civil Account Code and (C.T.R.) Compilation of Treasury Rules".

In para. 34, R.W. 20 says:—

"All articles which are kept in the Double Lock and are entered in the register of valuables are kept under orders of the authorities concerned and not on my own authority".

(N.B. Here was the authority of C.M. Nigam Ex. R. 5).

Krishna Mdho Saran (R.W. 20) was then asked in para. 35 why the valuables viz. the ballot paper bags and boxes were not entered in the Treasury Double Lock register on 1st March 1962 or on any subsequent date, he gives only a confused reply.

In para. 36 he admits that the ballot paper bags and boxes were kept in the Treasury Double Lock by him under para. 36 (XIX). He further states when he kept the ballot paper bags on 1st March 1962 he was acquainted with the provision of para. 36(b) of F.H.B. Vol. Part I. He did not seek any permission or any order from any officer to open a manuscript register for the deposit of bags on 1st March 1962.

In para. 40 he admits that in the Treasury double Lock register in different serial numbers entries there are regarding sealed boxes containing nomination papers and they were deposited under para. 36(XIX) of F.H.B. Vol. V Part I as ordered by D.C. dated 20th February 1961, 17th January 1961 and 19th July 1961. These were Election papers. This will show that the ballot paper bags of 34 Gonda Parliamentary election also should have been similarly entered in the prescribed Double Lock Register and given serial numbers. Thereafter a question was put to him why they were not so entered. In paras. 42, 43, 44 and 45 of his cross-examination he has tried to make various excuses and then finally in para. 46 he had to admit:—

"Negligence nahin tha irregularity zaroor hun tired hone ki wajah se irregularity ho gai".

118. It is abundantly clear from the above statements of the Treasury Officer that he violated all rules regarding the keeping of the ballot paper bags and entering them in the prescribed Double Lock Register of valuables. I would say he deliberately avoided making entries of deposit of the bags in the Treasury Double Lock Register for valuables. Had they been entered in the prescribed Double Lock Register, according to serial numbers, slips would have been attached to the respective ballot papers bags bearing the corresponding serial number of the register. This would certainly have prevented the possibility of the random movement of the bags.

119. The Treasury Officer, in para. 75 of his cross-examination, admits:—

"I did not attach the slips on the bags which were deposited bearing the serial number which was corresponding to the serial number in the register. In the Treasury whenever an article is deposited I enter the same in the Treasury Double Lock Register that is in the register of valuable against a serial number recorded in the register and that serial number is noted on the article concerned, and I issue receipts for the deposits by endorsing on the office copy of the order received

and entered at number such and such. The serial numbers mentioned in manuscript register Ex. R. 211 were not noted by me in the bags that were deposited. Rules of deposit were not observed".

Non observance of the rules in this manner opened a scope for commission of fraud and *malafide* acts. It was made easy for any of the election officer whose names appear in the manuscript register Ex. R. 211 in deposit and withdrawal column to remove any bag of their choice whenever they liked and to bring them back at their convenience.

In para. 76, Krishna Madho Saran (R.W. 20) admits:—

"The rules followed for withdrawal or return of deposit also was not observed in the case of ballot papers bags..... Out of the bags withdrawn by Sri R. B. Johari, there is nothing on the record to show which bags identically were withdrawn. Neither there is anything on the record of manuscript register Ex. R. 211 to show that R. B. Johari or any officer withdrew only those bags that were deposited by them respectively".

Regarding the entry into the Double Lock on 9th March, 1962, Krishna Madho Saran (R.W. 20) in para. 79 says:—

"I did not enquire from Sri D. L. Katiyar as to how there were eight bags for one segment that is Balrampur South segment as it did not strike me then nor was I concerned with it..... although there was difficulty about space but for the compliance of the order I deposited also these bags in the double lock room".

In para. 80 Krishna Madho Saran (R.W. 20) says:—

"I did not enquire nor did I come to know how the ballot papers of Balrampur Assembly Seat happened to come in Gonda Tehsil with the Tahsildar Gonda".

Ex. P. 137 shows that the counting of Balrampur South Assembly constituency was done in Balrampur Tehsil. It is not known how the ballot papers of Balrampur Assembly seat happened to be in Gonda Tehsil. These bags were also deposited with the Treasury Double Lock without corresponding entry in the proper register. This was clearly a subterfuge to create confusion in the movement of bags. The Treasury Officer's deliberate mischief in not recording the deposit of the bags in the Treasury Register of valuables was meant to give all the facility to the officers concerned to bring in or remove any of the bags from the Armoury Strong Room or Treasury Double Lock as and when it suited them to do so.

120. It is not disputed that the recounting of 33 Balrampur constituency commenced from the 5th March 1962 and the recount was concluded on the 7th March 1962.

The bags containing ballot papers of Gonda Parliamentary constituency were not removed when those containing ballot papers of Balrampur Parliamentary constituency were taken out during the above period.

The mischief in respect of the bags containing ballot papers of Gonda Parliamentary constituency began from the 8th March 1962 when they were shown to have been removed from the Armoury Strong Room to the Treasury Double Lock.

Normally there was no necessity or justification to remove these bags from the Armoury Strong Room on 8th March 1962, which was a public holiday and specially when the recounting was to take place the very next day i.e., from 9th March 1962.

121. It is significant to note that no notice of this movement was given to the parties and particularly to the petitioner in spite of the fact that his election agent had made an application Ex. P. 25 on 4th March 1962 to the Returning Officer, as follows:—

"In spite of it being a public holiday any occasion arises to open the Treasury Double Lock containing the ballot papers for any valid purpose, I may kindly be asked to be present on the occasion. I shall be available throughout the day at telephone No. 98".

The original of this Exhibit bears the signature of the Returning Officer as having received it on 5th March 1962 at 9.30 A.M. He paid no heed to this request.

The device to show justification for removing the bags of the Gonda Parliamentary constituency from the Armoury Strong Room to the Treasury Double Lock on 8th March 1962 has been very cleverly staged with the assistance of Kali Chander Johri (R.W. 19), who was the Nazir, Sadar, Gonda Collectorate, and R. B. Johri, Officer in charge of arms who was also A.R.O. On 7th March 1962 R.W. 19 gets a sudden inspiration to arrange the arms serially which have been stored in the Armoury Strong Room on the ground that the Commissioner's inspection during the month was due.

The Nazir writes down a report Ex. R. 6 addressed to the District Magistrate requesting that the sealed packets containing the ballot papers which have been kept in the Armoury Strong Room be ordered to be shifted to some other room to enable him to arrange the arms for verification of the Commissioner. The Nazir does not mention in this report the date on which the Commissioner's inspection is due. This report is submitted through R. B. Johri, who recommends the same day that the bags containing ballot papers which are to be recounted may be shifted to the Double Lock and the others to the Tehsil Record Room. On his recommendation, the District Magistrate (C. M. Nigam) endorses "Approved" on 7th March 1962.

This endorsement is followed up by the endorsement of R. B. Johri to Nazir asking him to inform the Tehsildar to take the bags of recounted constituencies to Tehsil and inform Treasury Officer to transfer the rest to Double Lock.

Kali Chandra Johri (R.W. 19) has stated that he did not know when Ex. R. 210 (tour programme of the Commissioner) was received in the Gonda Collectorate, yet it struck him on the 7th March 1962 for the first time that the verification of arms was overdue (*vide* paras 5 and 18 of his deposition).

122. R. B. Johri was the officer-in-charge Arms. The verification was to be done by him. According to him the Commissioner only checked if the annual verification was done by the officer-in-charge arms.

The Nazir wants to be believed that he will have to work for about 8 days for cleaning and arranging the arms and it will take 3, 4 days for verification of the same and, therefore, he felt the urgency of getting the armoury strong room vacated.

123. The falsity of "urgency" set up by the Nazir (R.W. 19) is clear from para 18 of his deposition, as noted below:—

"It struck me on 7th March 1962 for the first time that the verification of arms was overdue. This idea struck me on 7th March 1962 because I came to know about the Commissioner's visit. 8th and 9th March 1962 were both Bank holidays. Treasury also was closed on those dates. I cannot say what was the urgency for shifting the ballot papers and boxes on 8th March 1962 from the triple lock although 8th was a Collectorate and Treasury holiday.

Q:—There was no work done in connection with the verification of arms on 11th and 18th of March 1962, both being holidays. Can you give any reason why on 8th March every body wanted to work when that was a holiday?

Ans:—I cannot say why on 8th of March 1962, a holiday, we all worked when on 11th of March and 18th of March 1962 we did not work because these were holidays.

In para 16 of his deposition he admits that although he thought that the inspection of arms was overdue, he did not point this out to the officer-in-charge in January or February, 1962.

The District Magistrate, Gonda, who was also the Returning Officer for Gonda Parliamentary constituency was well aware that the recounting of the above Parliamentary constituency was to commence from 9th March 1962. This fact was also known to R. B. Johri who was the Assistant Returning Officer for the entire Gonda constituency.

124. The reply of the Nazir, Kali Chandra Johri (R.W. 19) in para 18 of his deposition makes it abundantly clear that the so-called "urgency" shown in Ex. R. 6 for removing the bags containing ballot papers from the Armoury Strong Room, set up by him, was faked in collaboration with R. B. Johri as well as C. M. Nigam, District Magistrate of Gonda.

Really speaking there was no urgency whatsoever to remove the aforesaid bags from the armoury strong room on 8th March 1962.

The inspection of the commissioner as per Ex. R. 210 was fixed for 23rd and 24th March 1962. The recounting was to be finished within 11th March 1962 and there was no reason for such hurry to shift the bags on 8th March 1962 which was a holiday.

125. The Treasury Officer has earlier in his deposition said that the Armoury Strong Room has three locks to store arms and hence it was known as Triple Lock. He has also stated that the key of one of these locks used to be with the Nazir and the other key with the Treasury Officer. Whenever this room was opened all the three officers had to be present. But Kali Chandra Johri (R.W. 19) even when he was confronted with the entries in Ex. R. 211 could not remember if on the 5th, 6th and 7th March 1962, R. B. Johri came to the Triple Lock to take away ballot paper bags and thereafter again to deposit bags into the Triple Lock. He also does not remember when Balrampur ballot paper bags were put into the Triple Lock Room nor can he give any reason why his signatures were not obtained on Ex. R. 211 when he was the custodian of the key of the 3rd lock. (vide paras 37, 41 and 42 of his deposition). The following admissions made by him in para 18 of his deposition show that he at least for the time being had no control over the Armoury Strong Room:—

"I did not make any entry anywhere when the ballot paper bags and the ballot paper boxes were deposited in Triple Lock on 1st March 1962. Similarly I did not make any entry anywhere when they were shifted from the triple lock on 8th March 1962. But the Treasury Officer had a register in which he took the signature of the Tehsildar when he handed over 15 bags to the Tehsildar on 8th March 1962. At no other time I saw that register of the Treasury Officer. I did not sign that register even when the ballot bags and boxes were taken away from the triple lock on 8th March 1962. The number of boxes that were kept in the triple lock on 1st March 1962 was 15 or 16. I cannot say the exact number. The number of gunny bags that were kept in the triple lock on 1st March 1962 was 25 or 30. I cannot say their exact number. The bags were of the size like those in which grains are carried."

126. It is clear that the Nazir was not present on any of the occasions when the Armoury Strong Room was opened and the Treasury Officer and R. B. Johri were engaged in the movement of the bags.

The Treasury Officer, Krishna Madho Saran (R.W. 20) in para 13 of his deposition stated that 8th and 9th March 1962 were declared holidays for 1d but the Treasury Office was opened. At first the Agent of the Government Treasurer came to him and informed him that ballot paper bags of Gonda Parliamentary constituency were to be shifted from Triple Lock to Double Lock. Then at about 1 or 1.30 P.M. the Nazir also arrived and gave the same information. At 2 P.M. C. M. Nigam, R. B. Johri and D. L. Katiyar came there. Ex. R. 6 was handed over to the witness by Tehsildar, Gonda. Thereafter, all of them went inside the Triple Lock. 15 bags of Balrampur Parliamentary constituency relating to A.R.Os—R. B. Johri 5 bags, Devanand Gaur 8 bags and S. R. Misra 2 bags, were made over to the Tehsildar.

127. Krishna Madho Saran (R.W. 20) in para 50 after seeing the entries in pages 2 and 3 (bottom) of Ex. R. 211 says that the number of Parliamentary bags deposited by R. B. Johri was 6. After reading Ex. P. 118-C and page 2 (bottom) of Ex. R. 211, he said that S. R. Misra deposited 2 bags of Balrampur Parliamentary constituency and D. N. Gaur deposited 8 bags. Thus, according to him, in all 16 ballot papers bags relating to Balrampur Parliamentary constituency were deposited in the Treasury.

This is contrary to his previous statement wherein he has said that there were 15 bags of Balrampur Parliamentary constituency which were made over to Tehsildar, Gonda on 8th March 1962.

In para 60, he says that the delivery of 15 bags was made to Tehsildar from the Triple Lock Room. Thereafter, he came to the Double Lock.

He gives a ridiculous explanation for not making an entry in the Triple Lock Room, because there was no chair, no table and no arrangement for writing.

* A close examination of the entries in Ex. R. 211 in respect of the deposit of Balrampur ballot paper bags throws much light as to the manner how the accounts were kept.

S. R. Misra deposited 5 bags on 1st March 1962, out of which 2 bags were of Utraula segment of Balrampur constituency vide Memo Ex. P. 118-C.

Devanand Gaur, S.D.O., Balrampur deposited in all 8 bags relating to Balrampur South, Balrampur North and Tulsipur segments of Balrampur constituency on 6th March 1962. He was A.R.O. of these three segments.

On 1st March 1962 R. B. Johri deposited 13 bags and it must be taken that this related to the remaining segment of Sadullanagar of Balrampur constituency.

The extraordinary feature is that while for Utraula segment the number of bags were only 2 and for three other segments in charge of Sri Gaur the number was 8, how could the number of bags of one segment Sadullanagar be 13 bags?

Another extraordinary feature is that while on 1st March 1962 the Treasury Officer took Memos from all the other A.R.Os. of Balrampur as well as Gonda Parliamentary constituencies when they deposited ballot paper bags, why he did not take a similar memo from R. B. Johri. The only note in this connection is Ex. P. 118-B—"R. B. Johri 13 bags".

Ex. P. 118-D.

"Deposited 13 bags in Double Lock—Sd/- R. B. Johri 1-3-62 3.50 P.M."

Ex. P. 118-E.

"Kept them in Double Lock in the presence of D.M. and D.E.O. 5 bags returned to Tehsildar, Gonda vide D.M.'s order dated 7th March 1962, signed T.O. dated 8th March 1962".

Ex. P. 118-A.

"Issues—Received 3 sealed bags of Sadullanagar constituency—Sd/- R. B. Johri for R. O. Sadullanagar 5th March 1962."

The entries below the name of R. B. Johri in Ex. R. 211 indicate that on 6th March 1962, 7 bags were taken away by R. B. Johri on the allegation that they were Assembly bags and in the remarks column R. B. Johri has noted "Deposited in Judicial Record Room"—Sd. R. B. Johri 6th March 1962".

128. Krishna Madho Saran (R.W. 20) in para 51 of his cross-examination stated that at the time when 13 bags were deposited by R. B. Johri, he did not know that there were 7 Assembly bags also included in the said 13 bags. This information was given to him by R. B. Johri himself.

From the statement in paragraph 52, it is clear that he did not know the contents of those bags whether they were really Assembly ballot papers.

R. B. Johri was himself the District Election Officer and R.A.O. of both the Parliamentary constituencies and A.R.O. of all the Assembly constituencies. It is unthinkable that he would by mistake allow 7 Assembly bags to be put in the Armoury Strong Room along with the Parliamentary bags, when he could well know that the number of bags of one segment Sadullanagar could not possibly be 13 bags.

It appears that the entry of 13 bags was purely fictitious.

Even assuming that there were 13 bags put by R. B. Johri in the Armoury Strong Room, out of which 6 bags were of Parliamentary constituency, Ex. P. 118-A shows that only 3 bags were issued for purpose of recounting on 5th March 1962.

Ex. P. 118-E is to the effect that on 8th March 1962 the said 13 bags were kept in the Double Lock in the presence of the District Magistrate and District Election Officer, out of which 5 bags were returned to Tehsildar vide District Magistrate's order dated 7th March 1962 (Ex. R. 6). This entry is totally false as according to the evidence of Treasury Officer himself and also Ex. R. 211 none of the bags of R. B. Johri were kept in the Double Lock on 8th March 1962.

129. The above facts lead to the only conclusion that all the entries were fictitious and were made simply to cover up unauthorised movement of bags relating to Gonda Parliamentary constituency.

Krishna Madho Saran (R.W. 20) stands self-condemned from the nature of his replies in paragraphs 52 to 61 of his cross-examination.

No reliance can be placed on Ex. R. 211 or the Memo exhibits specially Ex. P. 118-A, B. D. and E. There were movement of bags from the Armoury Strong Room and such movements were all behind the back of the petitioner and his election agent.

130. There is yet another important feature regarding the movement of bags. One Pratap Narain Tewari, a candidate for the Balrampur South Assembly seat, filed an application for recounting Ex. R. 3 on 7th March, 1962, on the very day the Nazir had put up his report Ex. R. 6 for vacating the Armoury Strong Room.

The Returning Officer of Balrampur South was D. N. Gaur and the counting of Balrampur South was held in Balrampur Tehsil vide Ex. P. 137-A. It is extraordinary that these ballot papers have been mentioned as lying in Gonda Tehsil. It is not known or has it been explained how they found their way from Balrampur Tehsil to Gonda Tehsil. Curiously enough this application Ex. R. 3 was moved also on 7th March, 1962 and it was addressed to the District Magistrate, Gonda who was not the Returning Officer so far as Balrampur South Assembly constituency was concerned.

It will be significant to note that though C. M. Nigam was not concerned with Pratap Narain Tewari's application Ex. R. 3, still he passed an order thereon the same day that the bags may be transferred to the Treasury Double Lock. This order was addressed to Tehsildar, Gonda. Tehsildar Gonda knew about District Magistrate's order on Ex. R. 6 in pursuance of which the Triple Lock was opened on 8th March, 1962 and allegedly 15 bags relating to Balrampur Parliamentary constituency were taken away by the Tehsildar from the Triple Lock and the bags containing ballot papers of Gonda Parliamentary constituency were transferred the same day from Triple Lock to Double Lock.

The above movement of bags is said to have been done in the presence of the Tehsildar, the Treasury Officer, the Government Treasurer's Agent, R.B. Johri, District Magistrate and the Nazir. This naturally raises the question why on the same day, i.e. on 8th March, 1962 these bags were not removed from the Tehsil and kept in the Double Lock.

Kali Chandra Johri (R.W. 19) has stated in para 7 of his deposition that the Tehsildar had come in a Pick-up.

Krishna Madho Saran, Treasury Officer (R.W. 20) stated in para 28 that it was only 5 minutes run by car from Treasury to Tehsil. If the movement was genuine, these bags could and should have been deposited in the Double Lock on 8th March, 1962 when it was specially opened for the purpose, in spite of its being a holiday. But this was not done. The only inference would be that for some purpose the door was left opened to bring in the ballot paper bags into the Treasury Double Lock on 9th March, 1962 and, therefore, I find that these bags have been shown as entered on 9th March, 1962.

Krishna Madho Saran (R.W. 20) knew that Pratap Narain Tewari was a candidate for Assembly seat from Balrampur constituency, but at first he would not say in which segment he sought election. He was then confronted with the endorsement made by him in Ex. R. 211 (column 4). He says :—

"That endorsement "Balrampur South Shri Pratap Narain Tewari's Seat" is in my handwriting."

Krishna Madho Saran (R.W. 20) in para 79 stated :—

"I did not enquire from Shri D. L. Katliyar as to how there were 8 bags for one segment i.e. Balrampur South segment as it did not strike me then nor was I concerned with it..... although there was difficulty about space but for the compliance of the order I deposited also these bags in the Double Lock Room."

In para 80 he says :—

"I did not enquire nor did I come to know how the ballot papers of Balrampur South Assembly seat happen to come in Gonda Tehsil with Tehsildar Gonda."

In para 25 he has said that on 9th March, 1962 the bags were deposited in Treasury Double Lock as per Ex. R. 3 between 9 and 10 A.M.

"S.D.M., Gonda (A. S. Misra) had nothing to do with the Treasury of Gonda. S.D.M., Gonda had nothing to do with the counting of ballot papers of Pratap Narain Tewari and he had nothing to do with election matter relating to Balrampur constituency."

Still, though he was A.R.O. for Gonda East and Gonda West segment, he was present along with the District Magistrate (C. M. Nigam) when the alleged bags

of Pratap Narain Tewari were kept in the Double Lock in the morning of 9th March, 1962 [vide deposition of Krishna Madho Saran (B.W. 20) in para 26].

131. The presence of these two officers on the above occasions is very significant.

Bags containing ballot papers of Gonda East and Gonda West segments of Parliamentary constituency were in charge of A. S. Misra who was the A.R.O. of those segments and how was C.M. Nigam interested unless he wanted to make sure that the ballot papers of the above two segments should be there in the morning of 9th March, 1962 before recounting of Gonda Parliamentary constituency commenced.

Krishna Madho Saran (R.W.20) in para 20 of his deposition says:—

"The S. D.M. Gonda and the D.M. Gonda came to the Treasury of their own accord along with the bags containing the ballot papers of Pratap Narain Tewari. The time for the opening of the Treasury is 10 A.M. The D.M. and S.D.M. that day did not send to me any intimation that they would be coming near about 9 A.M., but as the inspection work was going on I was in the Treasury Office, that is I was completing my arrears. No officer of A.G. Office was inspecting on that day".

This is certainly a very extraordinary co-incidence. It is clear that even before office hour i.e. 10 A.M. the Treasury Officer was in the office completing his arrears, it is also extremely queer that the District Magistrate and the S.D.M., Gonda would come along with the ballot papers to the Double lock to keep them there without any previous intimation to the Treasury Officer and without knowing that Treasury Office would be open at that time. It is equally queer that S.D.M. Gonda and the District Magistrate himself would take so much interest in the safe custody of Pratap Narain Tewari's ballot papers as to be present for the purpose although they had nothing to do with Pratap Narain Tewari's election.

132. The alleged entry of Pratap Narain Tewari's ballot papers in the morning of 9th March, 1962 was merely a blind for bringing in into the Double Lock some bags containing ballot papers of Gonda Parliamentary constituency which must have gone out of the Double Lock on 8th March, 1962 or earlier. There were outward movements of ballot papers from the Strong Room both on 6th March, 1962 and 8th March, 1962.

The Treasury Officer could not give any reason why on 8th March, 1962 when the ballot papers bags and boxes were transferred from the Armoury Strong Room to the Treasury Double Lock room, the bags containing ballot papers of Pratap Narain Tewari also were not shifted from the Tehsil to the Treasury Double Lock (vide para 28 of Krishna Madho Saran R.W. 20's deposition).

The Treasury Officer Krishna Madho Saran (R.W. 20) in paragraphs 72, 73, 74, 75 and 76 of his cross-examination has mentioned about the bags brought by R.B. Johri, as shown in Ex. R. 211.

In paragraph 76 of his cross-examination he says:—

"I did not issue receipts for the deposit of ballot paper bags and boxes excepting two cases namely A. S. Misra and D. N. Shukla. Therefore, the rules followed for withdrawal for return of deposit also was not observed in the case of ballot paper bags. On 1st March, 1962, all the ballot papers bags deposited by different officers were kept in the Triple Lock room at separate places, and slips were kept noting the officer's name on the respective lots. I do not remember who wrote those slips whether it was myself or my clerk. Those slips are not with me. If they are existing, then they may be lying in the triple lock room. Out of the bags withdrawn by Shri R. B. Johri, there is nothing on the record to show which bags identically were withdrawn. Neither there is anything on the record of manuscript register Ex. R. 211 to show that R. B. Johri or any officer withdrew only those bags that were deposited by them respectively".

133. The entries and the manner they were made in the manuscript register Ex. R. 211 would make it clear that the Treasury Officer and the Assistant Returning Officer have been juggling with the entries to make a show of deposit and withdrawal of bags on different dates to and from the Armoury Strong Room and the Treasury Double Lock particularly on 8th March, 1962 and 9th March, 1962.

These was nothing to prevent the A.R.O. of Gonda East and Gonda West segments to take away the bags of these two segments and both of the Assembly bags on 8th March, 1962 and to bring them back on 9th March, 1962 to the Treasury Double Lock along with the bags of ballot papers of Pratap Narain Tewari without detection. The reason why the D. M. Gonda and A. S. Misra were present when the bags were brought in on 9th March, 1962 is quite plain.

134. The recounting of Mankapur segment finished on 9th March, 1962. On the same day, 70 polling station of Mahadeva were finished. On 10th March, 1962, first of all the remaining polling stations of Mahadeva were taken up and finished and then the recount of Gonda North was taken up and finished by lunch. In the recounting of the abovementioned segments the variations were only minor which would appear even under normal conditions.

The resultant change in recounting of these three segments was (plus) 3 in favour of the petitioner.

135. The petitioner in paragraph 58 of the petition has given an account of the recounting of votes in Gonda East Assembly segment which commenced after lunch break on 10th March, 1962.

V.B. Bhadkamkar (P.W. 2) in para 50 of his deposition says:—

"The first round of recounting of Gonda East segment commenced shortly after 2 P.M. The second round commenced shortly before 3 P.M. During the first round of recounting of Gonda East, at one polling station some Ballot papers bearing an additional mark other than the voting mark in the cage of the petitioner were found. These ballot papers were found in the bundles of valid votes of the petitioner in the first count. After the second round commenced and as the packets of ballot papers were being opened and taken out, a very large number of ballot papers bearing such additional marks were found at several polling stations in the bundles of valid votes of the petitioner at first count".

In para 51. he states:—

"When I saw that such a large number of ballot papers, at so many polling stations were found and after I noted their characteristics and having seen the process of first counting myself, I came to the conclusion that such large number of double marked ballot papers would not have been included in the bundles of valid votes of the petitioner, and that the ballot papers must have been tampered with after the first count and before recount. These additional marking on the ballot papers, which were either in the cages of Respondent 1 or 2 or 3 were lightly impressed, generally showing only half or less than half of the voting sealing impression which was lighter in shade than that of the bold marks in the petitioner's cage and when compared with each other these additional marks in the cages of respondent 1 or 2 or 3 were similar, but they were strikingly different from the bold but varying marks in the cage of the petitioner".

In para 49 at page 29 he states:—

"At the same time, in the bundles of rejected ballot papers at some polling stations were found ballot papers which had been rejected at the first count on the grounds of "R.N.M." or "R.M.B.A." and were initialled and dated by the A.R.O. but were now having a lightly impressed voting marks in the cage of Respondent No. 1. "R.N.M." was the symbol for "Rejected No. Marking" and R.M.B.A. for "Rejected marked on blank area".

Most of the above facts were also admitted in general by Rama Nath Misra (R.W. 1) in para 47 of his deposition.

136. (a) The evidence of V. B. Bhadkamkar (P.W. 2) has been corroborated by N. Dandekar (P.W. 1) as well as by P. S. Subramanian (P.W. 3) vide paras 2 to 7.

P. S. Subramanian (P.W. 3) in para 3 of his deposition has stated that:—

"On a closer watch, I found that this was a case of tampering in that the second faint mark could not have been made simultaneously when the original mark was made".

In para 5 he states:—

"I suggested the R.O. that he should ask for an explanation from the A.R.O. as to why some of the ballot papers had been rejected by him, although they contained a mark against one of the contesting candidates. But the R.O. did not call for the explanation although I gave him a draft for the purpose". (Ex. P. 111).

P. S. Subramanian (P.W. 3) is very clear in para 6 of his evidence that about 30 polling stations of Gonda East were counted when he took the above action. This happened at about 3-30 P.M. on the 10th March, 1962.

In para 6, he further says:—

".....I then immediately took the R.O. to an adjoining room and had discussions with him. I went to the Collector's residence along with the Returning Officer at about 5 P.M. Collector/R.O. himself rang up the Chief Election Commissioner, New Delhi and told him about these happenings and thereafter, I was told by Sri Nigam, R.O. that the Chief Election Commissioner wanted to speak to me on the phone. I gave the C.E.C. a gist of what had happened there and also told him that we were keeping an account of all these ballot papers which seemed to be abnormal and would report later, and in the meantime I was directing the Returning Officer not to declare the result. The Chief Election Commissioner approved and said I should let him have the report when the counting is over. Then we returned to recounting place and finished the remaining polling station of Gonda East which was completed at about 9 P.M."

He has further deposed in paragraphs 7, 8 and 9 as follows:—

Para 7:—

"Recounting was started on 11th March, 1962 of Gonda West and one bundle of one polling station of Gonda East which was not available on the previous day. On the 11th similar abnormality in ballot papers were in Gonda West as were found in the Gonda East. By lunch time on 11th March, 1962 the recounting of all the polling stations were finished. At that time we did not discuss anything. But when we were having lunch at the residence of the Collector, I told him that we should report the full facts to the C.E.C. and if possible get him on telephone. In the meantime, the result should not be declared and for this purpose I told him that I would sign a formal order, a draft of which I had given him the previous night. But he did not give me the order for signature but assured me that he would not declare the result. I had dictated the draft to the Stenographer of the Collector in his presence. One was a report from the R.O. to the C.E.C. giving the gist and the other a formal direction to the Returning Officer ordering him not to declare the result for which I had already taken the approval of the C.E.C."

Para 8:—

"Both the typed drafts were placed before me, on which I made some changes and gave to the R.O. for retyping. I was staying with the Returning Officer at Gonda from 9th March to 11th March, 1962. I did not accompany the R.O. after lunch to the place of recounting as he assured me that he would not declare the result. The petitioner saw me at about 3-30 or 4 P.M. on 11th March, 1962. He informed me that the result had been declared. But before this I was aware of the fact from the R.O. himself that the result had been declared. I was upset because my orders were not carried out by the R.O. He had actually cheated me".

Para 9:—

"The two corrected drafts, I took back from the R.O. He was reluctant to part with them, I took them to Delhi after taking them from him. I have brought those drafts with me. I am placing them before the Tribunal. The drafts are Exs. P. 109 and 110. They bear the corrections made by me on them. The draft for the explanation from the A.R.O. was not issued. I produce it before the Tribunal. This is Ex. P. 111. The A.R.O. did not submit any explanation".

Nothing has been made out in the cross-examination of P.W. 3 to discredit his testimony. The best evidence to rebut what he has said above would have been that of C. M. Nigam, the Returning Officer. Respondent No. 1 has not examined

him. P. S. Subramanian (P.W. 3) is a dis-interested witness and I have no hesitation in accepting his above evidence as true.

136. (b) From the evidence of V. B. Bhadkamkar (P.W. 2) para 55 and from the progressive Chart in paragraph 96 of the judgment, it will be clear that the lead of the petitioner was overtaken during the recounting of ballot papers of polling station No. 74 Gonda East. At the close of the recount of polling station No. 40 of Gonda West, the Respondent No. 1 obtained a lead of 389 votes over petitioner. Thereafter, the Returning Officer seems to have lost interest in scrutinising the ballot papers. He began to overlook these ballot papers which were counted in favour of the petitioner at the first count, but which as a result of tampering were liable to be rejected for the same reasons for which similar ballot papers had been rejected at the recount.

Following are the ballot papers which should have also been rejected by the Returning Officer at the recount:—

Gonda West

Polling Station No.	No. of Votes	Exhibits
41	13	P. 99/1-13
42	14	P. 100/1-14
43	7	P. 101/1-17
45	38	P. 102/1-38
54	4	P. 104/1-4
60	16	P. 105/1-16
68	8	P. 106/1-8

Further, under the same circumstances the following ballot papers were not validated in favour of Respondent No. 1 although many of them (*vide* progressive chart) in similar conditions were validated in respect of polling stations prior to recount of polling station No. 42 Gonda West.

Gonda West

Polling Station No.	No. of Votes	Exhibits
42	3	P. 100/15-17
43	3	P. 101/8-10
45	1	P. 102/39
53	8	P. 103/1-8
60	3	P. 105/17-19
68	5	P. 106/9-13

This would indicate the interest which the Returning Officer took in the success of Respondent No. 1 at the recount.

137. V. B. Bhadkamkar (P.W. 2) has stated in para 56 of his deposition that in the last round of recounting of Gonda East Segment, it was discovered that the packet of Parliamentary votes of polling station No. 37 was missing and in its place there was a packet of Assembly votes of the same polling station. During the recount of Gonda West Segment 17 packets of Parliamentary votes of different polling stations were found missing.

In para 57 he states:—

"These 18 missing packets were found subsequently at the close of recounting of Gonda West Segment. These packets were brought by Shri A. S. Misra to the recount hall and it was given out that they had been found in the Assembly bags of Gonda East and West Segments.

In para 58 he says:—

"In the ballot papers of these missing packets, none were found with abnormal feature."

The above evidence of V. B. Bhadkamkar (P.W. 2) is with reference to the statement made by the petitioner in paras 65 and 66 of the petition. The facts deposed to by V. B. Bhadkamkar (P.W. 2) have been admitted by the Respondent No. 1 in para 65 and 66 of his written statement except that abnormal features were not found in the ballot papers of these packets which were missing and subsequently brought by A. S. Misra.

138. No abnormality was found in the ballot papers of polling stations 87 Gonda East and polling Stations 65, 69, 70 to 73, 75 to 82, 84 to 86 of Gonda West Assembly segment. Only in the polling station Nos. given below and that too of insignificant numbers.

P.S. No.	Petitioner		Respondent No. 1	
	1st count	Recount	1st count	Recount
GONDA EAST 87	184	183 (—1)	264	263 (—1)
GONDA WEST 65	No change		199	198 (—1)
69	99	98 (—1)	127	126 (—1)
70	75	74 (—1)	162	157 (—5)
71	78	75 (—3)	91	88 (—3)
72	No Change		No change	
73	No change		No change	
75	No change		150	151 (+1)
76	No change		No change	
77	No change		124	123 (—1)
78	No change		No change	
79	136	134 (—2)	141	140 (—1)
80	20	19 (—1)	145	146 (+1)
81	No change		No change	
82	55	53 (—2)	No change	
84	No change		No change	
85	No change		210	209 (—1)
86	128	127 (—1)	279	276 (—3)

At the time of recounting these were not in the bags of ballot papers of Gonda East and Gonda West segment. They were brought by the Assistant Returning Officer from somewhere (see deposition of V. B. Bhadkamkar (P.W. 2) paras 31 and 32).

The above fact is admitted by Respondent No. 1 in his written statement para 65, except that petitioner's version that no abnormality was found in those ballot papers was incorrect.

139. The affidavit of A. S. Misra, Assistant Returning Officer (before Hon'ble High Court Lucknow Bench) is to the effect that every thing was done properly at the first count. The ballot papers which were wrongfully validated for Congress on recount shown in the chart at pages 75, 76 and 77 were rejected as "R.M.B.A." and "R.N.M." in the first count. They were found to bear a voting mark in "BULLS" cage at recount. It is impossible firstly that the counting staff would put the ballot papers bearing a mark in the "BULLS" cage in the doubtful tray and secondly such ballot papers would be stamped "R.N.M." or "R.M.B.A." after being scrutinised by the A.R.O. That they were so marked is ample evidence that at the first count those marked "R.N.M." had no marks and those marked "R.M.B.A." had a mark in the Blank Area. The marks in the "BULLS" cage found on these ballot papers at the time of recounting must, therefore, be the result of tampering. It is also significant that these features were found at the recount in favour of Respondent No. 1 and not in favour of any other candidate.

140. There was sufficient material before the Returning Officer at the time of recounting to postpone the declaration of the result and make further enquiry in respect of these ballot papers as directed by the Deputy Election Commissioner, P. S. Subramanian (P.W. 3) with the approval of the Chief Election Commissioner.

The Returning Officer was interested in declaring the result in favour of Respondent No. 1 and he did so against the direction of the Deputy Election Commissioner.

It has been established from the evidence of the counting staff that no invalid votes were kept in the packets of valid votes of the petitioner and further that the ballot papers marked "R.N.M.", "R.M.B.A." were correctly so marked and that they did not have any mark on the "BULLS" cage at the time of counting.

141. The following facts have been established from the evidence both oral and documentary:—

- (1) The so-called safe custody did not ensure any safety whatsoever as far as the ballot papers were concerned.
- (2) The Returning Officer designedly postponed the declaration of the result in favour of the petitioner in the early hours of 1st March, 1962 and passed an illegal order allowing the respondent No. 1's application for recount.
Keen interest shown by the Returning Officer for the success of Respondent No. 1 at the recount.
- (3) There were unjustified movement of ballot paper bags when they were taken out from the Armoury Strong Room on 6th March, 1962 and 8th March, 1962 and on 9th March, 1962 when they were brought in to the Treasury double lock.
- (4) These movements of the bags were without any notice to the petitioner. They were done behind his back in spite of his election agent's letter Ex. P. 25.
- (5) For the purposes of removing the bags out of the Armoury Strong Room, a fake emergency was staged on 7th March, 1962 by the Nazir in collaboration with R. B. Johri and the District Magistrate, C. M. Nigam.
- (6) The movements of the bags containing ballot papers for recount were manoeuvred in a clever manner that any bag or bags could go out and get in before the commencement of recounting on 9th March, 1962.
- (7) Extraordinary features were found in respect of the ballot papers at the time of recounting. These have been exhibited. They were put to V. B. Bhadkamkar (P.W. 2) in his evidence. They are enumerated in Schedule 'A'.

SCHEDULE 'A'

Ex. P. Nos.	P.S. No.	First Count.	Recount	Total	Witness & Ex. Nos.
GONDA EAST					
45/1—2	21	R.M.B.A.	Valid for R. 1	2	
45/3—23		R.N.M.	"	21	
45/24—69		Valid for P	R.M. V. ⁶	46	P.W. 11:45/37, 38 57.
46/1—68	27	Valid for P	R.M.V	68	
46/69		R.M.B.A.	Valid for R. 1	1	
46/70—78		R.N.M.	"	9	
47/1—82	28	Valid for P	R.M.V.	82	
47/83—87		R.N.M.	Valid for R. 1	5	
47/88—100		R.M.B.A.	"	13	
48/1—136	32	Valid for P	R.M.V.	136	P.W. 6:48/1-137
48/137		R.N.M.	Valid for R. 1	1	P.W. 11:48/110.
49/1—169	33	Valid for P	R.M.V.	169	P.W. 12:49/37, 46, 57, 82 (blind voters) P.W. 11:49/37 (Ph), 46 (Ph), 125, 155

1	2	3	4	5	6
50/1-8 . . .	6	Valid for P	R.M.V.	8	
51/1-33 . . .	18	Valid for P	R.M.V.	33	P.W. 5:51/1-33. P.W. 11:51/26
52/1-112 . . .	34	Valid for P	R.M.V.	112	P.W. 5:52/1-121.
52/113 . . .		R.M.B.A.	Valid for R. 1	1	P.W. 14:52/63, 112. (blind voters).
52/114-121 . . .		R.N.M.	Valid for R. 1	8	P.W. 11:52/10, 28, 43.
53/1-9 . . .	36	Valid for P	R.M.V.	9	
54/1-30. . .	37	Valid for P	R.M.V.	30	
55/1-63. . .	41	Valid for P	R.M.V.	63	P.W. 4: 55/1-63. P.W. 11:55/4, 15, 48 (Ph), 57.
56/1-12. . .	42	Valid for P	R.M.V.	12	
56/13-16 . . .		R.M.B.A.	Valid for R. 1	4	
56/17-22 . . .		R.N.M.	"	6	
57/1-24. . .	43	Valid for P	R.M.V.	43	
57/25 . . .		R.N.M.	Valid for R. 1	1	
57/26-29 . . .		R.M.B.A.	"	4	
58/1-14. . .	44	Valid for P	R.M.V.	14	
59/1-22. . .	45	Valid for P	R.M.V.	22	
60/1-67. . .	46	Valid for P	R.M.V.	67	P.W. 7:60/1-68.
60/68 . . .		R.N.M.	Valid for R. 1	1	P.W. 11:60/24, 27.
61/1-44. . .	47	Valid for P	R.M.V.	44	
61/45 . . .		R.M.B.A.	Valid for R. 1	1	
61/46-51 . . .		R.N.M.	"	6	
62/1-73. . .	48	Valid for P	R.M.V.	73	P.W. 6:62/1-88.
62/74-78 . . .		R.M.B.A.	Valid for R. 1	5	P.W. 11:62/10, 47.
62/79-88 . . .		R.N.M.	"	10	
63/1-51. . .	49	Valid for P	R.M.V.	51	
64/1-76. . .	50	Valid for P	R.M.V.	76	P.W. 5:64/1-76.
65/1-15. . .	52	Valid for P	R.M.V.	15	
65/16-19 . . .		R.N.M.	Valid for R. 1	4	
66/1-10. . .	53	Valid for P	R.M.V.	10	
66/11-13 . . .		R.N.M.	Valid for R. 1	3	
67/1-45. . .	56	Valid for P	R.M.V.	45	
67/46-48 . . .		R.M.B.A.	Valid for R. 1	3	
67/49-55 . . .		R.N.M.	"	7	
68/1-54. . .	57	Valid for P	R.M.V.	54	P.W. 4:68/1-54. P.W. 11:68/2, 12, 14, 24, 32, 33, 34 (Ph). Annex. "C").
69/1-5 . . .	64	Valid for P	R.M.V.	5	P.W. 6:69/1-7.
69/6 . . .		R.M.B.A.	Valid for R. 1	1	
69/7 . . .		R.N.M.	"	1	
70/1-34. . .	65	Valid for P	R.M.V.	34	
71/1-34. . .	66	Valid for P	R.M.V.	34	P.W. 5:71/1-36.
71/35 . . .		R.N.M.	Valid for R. 1	1	
71/36 . . .		R.M.B.A.	"	1	
72/1-12. . .	68	Valid for P	R.M.V.	12	

I	2	3	4	5	6
72/13—15	.	R.M.B.A.	Valid for R. 1	3	
72/16—19	.	R.N.M.	"	4	
73/1—85.	69	Valid for P	R.M.V.	85	P.W. 11:73/60, 68-70, 71-75. (68, 71, 74 (Ph. Annexure 'C')).
73/86—87	.	R.M.B.A.	Valid for R. 1	2	
73/88—91	.	R.N.M.	"	4	
74/1—25.	70	Valid for P	R.M.V.	25	
74/26	.	R.M.B.A.	Valid for R. 1	1	
74/27—31	.	R.N.M.	"	5	
75/1—18.	73	Valid for P	R.M.V.	18	P.W. 4:75/1—25.
75/19	.	R.M.B.A.	Valid for R. 1	1	
75/20—26	.	R.N.M.	"	6	
76/1—58.	74	Valid for P	R.M.V.	58	P.W. 11:76/45, (Ph. Annex. 'C') 55.
76/59—74	.	R.N.M.	Valid for R. 1	16	
77/1—22.	75	Valid for P	R.M.V.	22	
78/1—30.	78	Valid for P	R.M.V.	30	P.W. 7:78/1—39.
78/31—39	.	R.M.B.A.	Valid for R. 1	9	
79/1—21	79	Valid for P	R.M.V.	71	
80/1—23.	81	Valid for P	R.M.V.	23	
81/1—12.	83	Valid for P	R.M.V.	12	
82/1—13.	84	Valid for P	R.M.V.	13	
83/1—16.	85	Valid for P	R.M.V.	16	
84/1—71.	88	Valid for P	R.M.V.	71	
84/72	.	R.M.B.A.	Valid for R. 1	1	
84/73—88	.	R.N.M.	"	16	
GONDA WEST.					
85/1—20.	14	Valid for P	R.M.V.	20	P.W. 7:85/1—22.
85/21—22	.	R.N.M.	Valid for R. 1	2	
86/1—23.	25	Valid for P	R.M.V.	23	P.W. 4:86/1—23.
87/1—3	33	Valid for P	R.M.V.	3	
87/4—10.	.	R.N.M.	Valid for R. 1	7	
87/11—18	.	R.M.B.A.	"	8	
88/1—2	39	R.N.M.	Valid for R. 1	2	
88/3—4	.	R.M.B.A.	"	2	
89/1—25.	41	Valid for P	R.M.V.	25	P.W. 4:89/1—26.
89/26—28	.	R.M.B.A.	Valid for R. 1	3	
89/29—36	.	R.N.M.	"	8	
90/1—24.	42	Valid for P	R.M.V.	24	
90/25—31	.	R.N.M.	Valid for R. 1	7	
91/1—10.	43	Valid for P	R.M.V.	10	P.W. 11:91/1.
92/1—8	45	Valid for P	R.M.V.	8	
92/9—10.	.	R.N.M.	Valid for R. 1	2	
93/1—4	53	Valid for P	R.M.V.	4	P.W. 11:93/3 (Ph. Ann. 'C').
94/1—8	54	Valid for P	R.M.V.	8	
94/9—11.	.	R.N.M.	Valid for R. 1	3	

1	2	3	4	5	6
95/1—2 . . .	57	Valid for P	R.M.V.	2	P.W. 4:95/1—6.
95/3—6 . . .		R.N.M.	Valid for R. 1	4	
96/1—5 . . .	60	Valid for P	R.M.V.	5	
97/1—2 . . .	66	Valid for P	R.M.V.	2	P.W. 5:97/1—2.
98/1—4 . . .	68	Valid for P	M.R.M.V.	4	

These extraordinary features were detected by Narain Dandekar, petitioner (P.W. 1) and his Election Agent V. B. Bhadkamkar (P.W. 2). Deputy Election Commissioner himself was convinced that there was tampering of the ballot papers which prompted him to direct the Returning Officer to maintain a separate account of these ballot papers in a special form and to call for an explanation from the Returning Officer. He also directed the Returning Officer with the approval of the Chief Election Commissioner not to declare the result of the election.

(8) The special features with regard to these ballot papers were as follows:—

- (a) There were no perceptible changes at the recounting so far as Mankapur, Mahadeva and Gonda North segments were concerned.
- (b) No objection was raised at the time of counting of Gonda East and Gonda West segments.
- (c) Objections were raised only in respect of Mankapur segment (*vide* Ex. P.1, p.2, and P. 19). No appreciable change, however, was found in Mankapur segment at the recounting. Even in Ex. P. 3 recounting was claimed in respect of all the Assembly constituency areas included in the Gonda Parliamentary constituency and more particularly for the areas of the Assembly constituencies of Gonda North and Mankapur.

(9) In the final objection, the main stress of respondent No. 1 was in respect of the counting of Gonda North and Mankapur segments. But no appreciable change was found in these two segments at the recounting.

- (a) In Respondent No. 1's application, Ex. P.2, p.19 and P.3, there is no allegation that any vote was wrongly accepted for the petitioner at the first count. There was thus no challenge in this respect from Respondent No. 1.

Very large number of ballot papers accepted as valid for the petitioner at the first count were found to bear multiple voting marks at the time of recount. In fact, these were the ballot papers, which materially affected the result of the election. After the first count, the petitioner was leading by 1576 votes (including the postal ballots) and the number of ballot papers originally accepted as valid for petitioner. At the recount these ballot papers were rejected for multiple voting marks (total 1930) excluding two such ballot papers (i) Ex. P47/2 Polling Station No. 28, Gonda East Ballot Paper No. 330530 and (ii) Ex. P. 52/87. Polling Station No. 54 Gonda East, Ballot Paper No. 326388. These two do not bear voting marks in "STAR" cage.

- (b) Ballot papers originally rejected as R.N.M. and R.M.B.A. at the first count were found to bear a voting mark in "BULLS" cage at the recount (Total 236).

The following are the ballot papers which were originally rejected by the A.R.O. and marked R.N.M. or R.M.B.A.

Ex P.

45/1-23
46/69-78
47/83-100
48/137
52/113-121
56/13-22

57/25-29
60/68
61/45-51
62/74-88
65/16-19
66/11-13
67/46-55
69/6-7
71/35-36
72/13-19
73/86-91
74/26-31
75/19-25
76/59-74
78/31-39
84/72-88
85/21-22
87/4-18
88/1-4
89/26-36
90/25-31
92/9-10
94/9-11
95/3-6

(c) The above changes at the recount were all against the petitioner and in favour of Respondent No. 1. These abnormal features were not detected at the recount in case of other candidates.

(d) All ballot papers originally held as valid for the petitioner had a prominent mark in the cage of the "STAR" while the subsequent mark was in one or the other cages with comparatively very faint impression, mostly half or less than half.

From the above circumstances, tampering of ballot papers by Respondent No. 1 has been conclusively established. The facts stated above are consistent with the hypothesis of tampering and tampering only. The circumstances and facts proved by evidence exclude every hypothesis other than that of tampering of ballot papers sometime after the first counting and before the recounting. The above inference is fully supported by the evidence of Presiding Officers.

142. There is clinching evidence of Ram Sarup (P.W. 12), Raghunandan Singh Yadav (P.W. 13), Hori Lal (P.W. 14) who were Presiding Officers of polling station 33 Gonda East, 68 Gonda West and 34 Gonda East respectively, which proves that there was tampering in ballot papers.

143. Ram Sarup (P.W. 12) was the Presiding Officer at Polling Station 33 Gonda East. His diary is Ex. P. 114. It shows that ballot papers Ex. P. 49/37, P. 49/46, P. 49/57, and P. 49/82, were marked by him, on being asked to do so by blind voters. He categorically stated that he put only one mark each on the above ballot papers.

Undoubtedly there must have been only one voting mark on each of these ballot papers at the time of first counting. Other voting mark that have appeared on these ballot papers at the time of recounting must, therefore, be the result of tampering done sometime after the first counting and before the recounting.

Hori Lal (P.W. 14) was the Presiding Officer at polling station 34 Gonda East. His diary is Ex. P. 116 and it shows that ballot paper Ex. P. 52/28 and 52/43 were marked by him on being asked to do so by the blind voters. He has also stated on oath that he affixed only one mark on each of the ballot papers.

This evidence also proves that there was only one voting mark on each ballot paper and the second voting mark found on them at the time of recounting must have been the result of tampering.

Raghunandan Singh Yadav (P.W. 13) was the Presiding Officer at polling station 68 Gonda West. His diary is Ex. P. 115. It shows that ballot paper Ex. P. 106/4 was marked by the Presiding Officer himself on being asked to do so by the blind voter.

He has stated on oath that he put only one mark on this ballot paper. It must have had one voting mark at the time of counting and that the second mark which appeared on recounting must be the result of tampering.

The testimony of Ram Sarup (P.W. 12), Raghunandan Singh Yadav (P.W. 13) and Hori Lal (P.W. 14) cannot be doubted. Their evidence is supported by the diaries maintained by them at the time of poll under Rule 40(2) of the Conduct of Election Rules, 1961. The ballot papers of the blind voters were kept in the bags of Gonda East and Gonda West Segments.

The above testimony of Ram Sarup (P.W. 12), Raghunandan Singh Yadav (P.W. 13) and Hori Lal (P.W. 14) leads to the irresistible conclusion that there was tampering of ballot papers of Gonda East and Gonda West segments and the tampering could have been possible only if the bags containing the ballot papers of Gonda East and Gonda West segments were made available to Respondent No. 1 before 9-3-1962 and were brought back to the Treasury in the morning of 9-3-1962 between 9 and 10 A.M.

Petitioner was shown the bags on 9-3-1962 in the Treasury Double Lock just before the recounting. The wax seals of R.O. was found on the bags.

This has no significance. It was not at all difficult to obtain the R.O.'s seal and seal the bags before they were placed in the Double Lock on 9-3-1962.

144. Futile attempt was made by Respondent No. 1 to explain away the double marking on the ballot papers of the blind voters referred to by Ram Sarup (P.W. 12), Raghunandan Singh Yadav (P.W. 13) and Hori Lal (P.W. 14).

Witnesses—Triloki Nath (R.W. 7), Lok Nath (R.W. 8), Ram Samuih Misra (R.W. 9), Ram Naresh (R.W. 10), Jagdish Prasad Singh (R.W. 11), Ram Narain Shukla (R.W. 12), Hari Ram (R.W. 13), Ram Chandra Srivastava (R.W. 16), and Gurdeo Saran (R.W. 17) were produced by Respondent No. 1 who were made to say that many of the voters were not inclined to vote for the petitioner, but on pressure being brought upon them, they decided to spoil the votes by putting two marks on the ballot paper. There is no pleading by Respondent No. 1 to the above effect in his written statement.

Their statement on the face of it is absurd and not worth considering. I hold that there was tampering with the ballot papers between the first counting and recounting.

I further hold that the ballot papers which were counted as valid for petitioner in the first count and subsequently declared invalid at the recount, should be counted as valid votes for petitioner.

The votes which were rejected at the first count by the A.R.O. with the remarks "R.N.M.", "R.M.B.A." but could be held valid for congress, meaning for Respondent No. 1, at the recount by the Returning Officer, should be rejected as invalid.

145. There is also evidence of C. T. Sarwate (P.W. 11), who is an additional Government Examiner Questioned Documents to the Government of Madhya Pradesh and a consulting expert to the Government of Rajasthan.

He examined ballot papers of 40 polling stations of Gonda East and 14 polling stations of Gonda West and submitted his report, which is Ex. P. 113, in which he maintains that in the large majority of ballot papers listed in Annexure A to his report, there has been tampering.

He says that the Star voting marks and the non-star voting marks were not made at the same time that is not made immediately after the Star voting marks or *vice-versa*.

He further says that the Star voting marks were made first that is at the time of voting and the non-star voting marks were not made at the time of voting but subsequently.

The reason given for the above opinion is that a large majority of non-star voting marks are faint and show a lack of continuity when compared with the star voting marks as regards the shade and deposit of ink in them.

146. I have carefully examined each and every ballot papers, which have been exhibited by the petitioner as tampered ballot papers and find that the majority of the non-star voting marks are either very faint as compared to the

Star voting marks or have incomplete impressions, that is in a large number of them the star voting marks are mere arc of a circle like a crescent. In some of these ballot papers there is only slight difference in the shade of ink in the star voting mark *vis-a-vis* the non-star voting mark. Such marks which do not show much difference in the shade of ink, in my opinion, would be those which were impressed immediately after inking at the time of tampering, because the first impression at the time of tampering will have a good flow of ink and subsequent marks by the same seal at the time of tampering would become gradually faint more and more, and will thus show lack of continuity. However in cases where the difference is not much in ink shade in the two markings, it will be difficult to find lack of continuity.

147. Most important feature about which C. T. Sarwate (P.W. 11) has given his opinion is in respect of the ballot papers listed in Annexure 'C' to his report. Enlarged photographs of these ballot papers have also been filed by him.

C. T. Sarwate (P.W. 11) has deposed in respect of these ballot papers that upon critical examination, the undermentioned features of a distinctive character were disclosed:—

- (1) A characteristic break in the circular ring of the impression.
- (2) A similar characteristic break in the arm of the cross nearest to (1) above and to the left of it.
- (3) A characteristic mark usually line across the circular ring to the left of (2) above.
- (4) A sharp angular projection at the right extremity of the break referred to in 1 above.
- (5) All the above characteristics are almost in a line and are in a fixed position in relation to each other. The above mentioned characteristics have been indicated by above marks on the photo enlargements in Annexures 'B' and 'C'.

From the study of the above distinctive features in the non-star voting mark his opinion is as follows:—

- (a) That the non-star voting mark on all these ballot papers have been made by the same rubber stamp.
- (b) That wherever the star voting mark on any of these ballot papers is clear it is evident that the rubber stamp used for making the non-star voting mark was not the same as that used for making the star voting mark.
- (c) That further more and specifically in regard to all the ballot papers listed in Annexure 'C'.
 - (1) The star voting mark and the non-star voting marks were not made at the same time.
 - (2) The star voting marks were made first i.e., at the time of voting and the non-star voting mark were not made at that time. That is, at the time of voting immediately after making the star voting mark, but at some time subsequently.
 - (3) On none of these ballot papers was the star voting mark and the non-star voting mark were made by the same person.

His reasons for the opinion are:—

- (1) The simultaneous occurrence of all the distinctive characteristics described above in all the non-star voting mark on the ballot papers listed in Annexure 'C' indicates that they were all made by the one and the same rubber stamp. It is impossible that two rubber stamps will both have all these identical characteristics.
- (2) It is impossible that the same identical rubber stamp could have been used at more than one polling station of Gonda Parliamentary constituency.
- (3) It follows that the non-star voting mark on these ballot papers were not made at the time of voting at all or by the same person who made the star voting mark.

148. I have examined the enlarged photographs of these ballot papers and I accept his opinion in respect of them. While examining each and every ballot paper I found it difficult to mark the abovementioned characteristics with the

naked eye. It can, however, be safely accepted that in the ballot papers bearing multiple voting marks there could be no characteristic difference in the impressions, if the voting marks were made simultaneously with the same seal. It is obvious that the same rubber stamp would not have been used simultaneously in different polling stations.

I accept C. T. Sarwate (P.W. 11)'s opinion that the non-star voting marks were made on ballot papers of different polling stations by the same rubber stamp on some subsequent date after the polling.

Respondent No. 1 led evidence of Sharif Ahmad (R. W. 18) who is a rubber stamp maker to show that flow can be made up in rubber stamp seals in the process of making them.

This is neither here nor there. If a rubber stamp is used for impressing one voting mark, then the second voting mark which is impressed by the same seal must also show the identical flaw. This is not the case in respect of the ballot papers examined by C. T. Sarwate (P.W. 11) mentioned in Annexure 'C' of Ex. P. 113.

149. Respondent No. 1 examined Russel A. Gragery (R. W. 22). He has not agreed with the opinion of C. T. Sarwate (P.W. 11), but no weight can be attached to his statement because he has neither examined the original ballot papers nor has he formed any definite opinion of his own.

Regarding the characteristic breaks in the non-star voting marks in ballot papers in Annexure 'C' of C. T. Sarwate (P. W. 11)'s report, the witness Russel A. Gragery (R. W. 22) admits in paragraphs 14 and 15 of his deposition that the said voting marks are not seen in the corresponding Star cage marks. He has sought to volunteer that this may be due to heavy inking, but an examination of the photographs and the original ballot papers show that such a statement is without foundation.

150. Respondent No. 1 filed specimen seal marks Ex. R. 14/1 to Ex. R. 14/21 to show that V. B. Bhadkamkar (P. W. 2)'s opinion about tampering by judging from the faintness of the voting marks was without foundation. (Vide para 51 of V. B. Bhadkamkar P. W. 2's deposition).

In para 208 of his deposition, V. B. Bhadkamkar (P. W. 2) has stated about the different shades of ink in the Ex. R. 14/1 to Ex. R. 14/21.

The above exhibits are the result of an experiment made in the office of the Advocate General in the presence of Brij Behari Sahai (R. W. 21), who is the Principal of Kulbhashkar Degree College, Allahabad. These impressions in Ex. R. 14/1 to Ex. R. 14/21 were made in his presence with the rubber stamp seal, which to his best knowledge was provided by Rama Nath Misra (R. W. 1). For making every two impressions the seal was inked only once for making marks on each sheet of paper (vide para 2 of his deposition).

In his cross-examination the following question was put to him:—

"Question:—Can you give any reason why you at your own accord decided to put two marks and not either less or more than two marks on each of these papers?

His answer was as given below:—

"It was suggested to me by Pt. Kanhaiya Lal Misra and a few other gentlemen sitting with him in his office where I had been taken the day next to Mr. Veragi's talk with me that two marks should be made on several pieces of paper. It was also suggested that there should be no re-inking in between the two markings on the same piece of paper. I recognise Pt. Kanhaiya Lal Misra, Sri R. N. Misra and others present I do not recognise."

In his cross-examination he also admits that more than one person present at the office of the Advocate General put the marks on these papers Ex. R. 14/1

to Ex. R. 14/21. He could not say how many of them did the marking but he said "Sri R. N. Misra (R. W. 1) may be one of them".

It is clear that there has been a deliberation in the minds of those persons who were affixing these marks as to the manner in which they should be done. Under the circumstances the result of the experiment posed in the Ex. R. 14/1 to Ex. R. 14/21 has no value.

151. During the recounting there was sufficient justification for V. B. Bhadkamkar (P. W. 2) to form an opinion from the nature of the marking appearing on the ballot papers that they were tampered.

C. T. Sarwate (P. W. 11) has given another cogent reason for his opinion that the ballot papers were tampered. The reasons are given in Ex. P. 113 as follows:—

"In some cases the non-star voting marks show similar shade and deposit of ink on the lines which is consistent with the Star voting mark and in such cases it would ordinarily be difficult to determine the order of the impressions, taking into consideration the shade and the deposit of ink, but in the majority of such cases, while the star voting mark has caused a 'reflected' impression on folding, the non-star voting marks show no such impression. If the two impressions were made at the same time showing almost similar shade and deposit of ink, it is improbable that, while one gives a reflected impression after folding, the other does not. The only possible explanation for this is that the Star voting mark was on the ballot paper before it was folded and that the non-star voting mark has been impressed subsequently."

I accept the reasons given above for determining whether the ballot papers were tampered or not.

I have examined all the ballot papers and in large number of them I have found the reflected impression corresponding to the star voting mark but no such reflected impression corresponding to the non-star voting mark, although several non-star voting marks show similar shade and deposit of ink as the star voting mark (see Schedule 'B' below).

SCHEDULE 'B'

P.S. No.	Break in the arm	Same shade	Reflected impression found only in star mark	Non-star mark very faint
1	2	3	4	5
GONDA				
EAST				
24	Ex. P. 45 24, 25, 46, 47, 50, 55, 57, 58, 60, 61, 65, 67, 68, 69.	Ex. P. 45 26 to 45, 48, 49, 51 to 54, 56, 59, 61 to 63 & 66.
27	Ex. P. 46 1, 7, 11, 34 & 39.	Ex. P. 46 2, to 6, 8 to 10, 12 to 33, 35, to 38, 40 to 68.
28	Ex. P. 47 11 to 13, 17, 19, 23, 43, 52, 54, 63, 65 & 82	Ex. P. 47 1 to 10, 14 to 16, 18, 20 to 22, 24 to 42, 44 to 51, 53, 55 to 62, 64, 66 to 81.
32	Ex. P. 48 22, 47, 48, 49, 71, 80, 81, 83, 88 to 90, 102, 105, 106, 107, 131 & 133	Ex. P. 48 1 to 21, 23 to 46, 50 to 70, 72 to 79, 82, 84 to 87, 91 to 101, 103, 104, 108 to 130, 132, 134 to 136.
33	Ex. P. 49 32, 47 & 131	Ex. P. 49 1 to 31, 33 to 46, 48 to 130, 132 to 169.
6	Ex. P. 50 2 to 5.	Ex. P. 50 1, 6 to 8.
18	Ex. P. 51 2, 3, 8, 25 & 27	Ex. P. 51 1, 4 to 7, 9 to 24, 26 to 33.

1	2	3	4	5
34	Ex. P. 52/1, 5, 7, 8, 12, 14, 19, 25, 30, 33, 34, 39, 40, 41, 44, 47, 48, 49, 54 to 58, 62, 66, 67, 71 to 75, 77, 85, 86, 91, 93, 96, 97 to 99, 101 to 104, 107, 111 & 112.	Ex. P. 52/2 to 4, 6, 9 to 11, 13, 15 to 18, 20 to 24, 26 to 29, 31, 32, 35 to 38, 42, 43, 45, 46, 50 to 53, 59 to 61, 63 to 65, 68 to 70, 76, 78 to 84, 87 to 90, 92, 94, 95, 100, 105, 106, 108 to 110.
36	Ex. P. 53/2, 3 & 5.	Ex. P. 53/1, 4, 6 to 9.
37	Ex. P. 54/4	Ex. P. 54/1 to 3, 5 to 30.
41	Ex. P. 55/4, 18 & 23		Ex. P. 55/1 to 3, 7, 8, 11, 15, 19, 21, 22, 24 to 28, 30, 32, 35, 38 to 44, 47, 55 & 58.	Ex. P. 55/5, 6, 9, 10, 12, to 14, 16, 17, 20, 29, 31, 33, 34, 36, 37, 45, 46, 48 to 54, 56, 57, 59 to 63.
42	Ex. P. 56/1 to 12.
43	Ex. P. 57/2, 7, 9, 13, 17, 22, 23 & 24.	Ex. P. 57/1, 3 to 6, 8, 10 to 12, 14 to 16, 18 to 22.
44	Ex. P. 58/1*, 5, 7 & 13*	Ex. P. 58/2 to 4, 6, 8 to 12 & 14.
45	Ex. P. 59/1 to 22.
46	Ex. P. 60/24		Ex. P. 60/9, 15, 40, 41, 51 and 53	Ex. P. 60/1 to 8, 10 to 14, 16 to 23, 25 to 39, 42 to 50, 52, 54 to 67.
47	Ex. P. 61/19, 26, 36 & 41	Ex. P. 61/1 to 18, 20 to 25, 27 to 35, 37 to 40, 42 to 44.
48	Ex. P. 62/27		Ex. P. 62/18, 37, 43, 47, 51, 64, 66 & 69.	Ex. P. 62/1 to 17, 19 to 26, 28 to 36, 38 to 42, 44 to 46, 48 to 50, 52 to 63, 65, 67, 68, 70 to 76.
49	Ex. P. 63/1, 12, 13, 18, 20, 23 to 25 & 37.	Ex. P. 63/2 to 11, 14 to 17, 19, 21, 22, 26 to 36, 38 to 51.
50	Ex. P. 64/22*, 23, 24, 26, 40, 42, 44 to 47, 54, 55, 56*, 58*, 59*, 63, 64, 73*, 74 to 76.	Ex. P. 64/1 to 21, 25, 27 to 39, 41, 43, 48, 10 53, 57, 6* to 62, 65 to 72.
52	Ex. P. 65/3, 5 & 11*.	Ex. P. 65/1, 2, 4, 6 to 10, 12 to 15.
53	Ex. P. 66/3 & 4	Ex. P. 66/1, 2, 5 to 10.
56	Ex. P. 67/29, 33 & 41	Ex. P. 67/1 to 28, 30 to 32, 34 to 40, 42 to 45.
57	..	Ex. P. 68/30.		Ex. P. 68/6, 12, 14, 19, 27, 29*, 47 & 53.
64	Ex. P. 69/1 to 5.
65	..	Ex. P. 70/12.		Ex. P. 70/33 & 34
66	Ex. P. 71/1*, 5, 6, 8, 14, 15, 17, 21, 27, 33.	Ex. P. 71/2 to 4, 7, 9 to 13, 16, 18 to 20, 22 to 26, 28 to 32 & 34.
68	Ex. P. 72/7, 8 & 11	Ex. P. 72/1 to 6, 9, 10 & 12

1	2	3	4	5
69		Ex.P.73/3, 5, 11, 12, 19, 21, 22, 25, 26, 27, 34, 51, 55, 58, 65, 66, 67, 75* & 79.		Ex.P.73/1, 2, 4, 6 to 10, 13 to 18, 20, 23, 24, 28 to 33, 35 to 50, 52 to 54, 56, 57, 59 to 64, 68 to 74, 76 to 78, 80 to 85.
70		Ex.P.74/7		Ex.P.74/1 to 6, 8 to 25.
73		Ex.P.75/2, 4*, 5, 10, 11 & 14.		Ex.P.75/1, 3, 6 to 9, 12, 13, 15 to 18.
74		Ex.P.76/3, 9, 10, 11, 12, 19, 33, 37, 42 & 49.		Ex.P.76/1, 2, 4 to 8, 13 to 18, 20 to 32, 34 to 36, 38 to 41, 43 to 48, 50 to 58.
75				Ex.P.77/1 to 22.
78		Ex.P.78/3, 5, 13*, 23, 27 & 29.		Ex.P.78/1, 2, 4, 6 to 12, 14 to 22, 24 to 26, 28 & 30.
79		Ex.P.79/5, 8, 21, 24, 28, 30, 41, 52, 53, 56, 60, 65, 66, 70 & 71.		Ex.P.79/1 to 4, 6, 7, 9 to 20, 22, 23, 25 to 27, 29, 31 to 40, 42 to 51, 54, 55, 57 to,, 59, 61 to 64, 67 to 69.
81		Ex.P.80/17		Ex.P.80/1 to 16, 18 to 23.
83				Ex.P. 81/1 to 12.
84		Ex.P. 82/1*, 3*, 10 & 12.		Ex.P.82/2, 4 to 9, 11 & 13.
85				Ex.P.83/1 to 16.
88		Ex.P.84/2, 4, 5, 6, 9, 12, 14, 15, 19, 20, 22, 23, 25, 27, 34 to 38, 49, 54, 58, 62, 64 to 71.		Ex.P.84/1, 3, 7, 8, 10, 11, 13, 16 to 18, 21, 24, 26, 28 to 33, 39 to 48, 50 to 53, 55 to 57, 59 to 61 & 63.
GONDA WEST				
14		Ex.P.85/9 & 10		Ex.P. 85/1 to 8 & 11 to 20.
25				Ex.P.86/1 to 23.
33				Ex.P.87/1 to 3.
41		Ex.P.89/4, 19 & 21		Ex.P.89/1 to 3, 5 to 18, 20, 22 to 25.
42		Ex.P.90/6.		Ex.P.90/1 to 5, 7 to 24.
43				Ex.P.91/1 to 10
45				Ex.P.92/1 to 10.
53				Ex.P.93/1 to 4.
54				Ex.P.94/1 to 8.
57		Ex.P.95/2		Ex.P.95/1
60				Ex.P.96/1 to 6.
66				Ex.P.97/1 & 2.
68				Ex.P.98/1 to 4.

In the Exhibits marked Asterisk the shade of the ink of the voting mark in the non-star cage is almost of the same depth as the voting mark in the star cage, but it has no reflected impression like that of the voting marks in the star cage.

152. Issue No. 2:—

The petitioner in para 40 of the petition has stated that during the night of 28th February 1962 after it became clear that Respondent No. 1 was losing the election, he and the Returning Officer (C. M. Nigam) were continuously in touch with each other and probably also with the State Head-quarters in Lucknow.

Katyanl Dutt (P. W. 10) has deposed that he had seen Respondent No. 1 going to the residence of District Magistrate after leaving the *Shamiana*, where votes of Mankapur segment were being counted on 28th February, 1962.

The petitioner has also stated in his petition that he learnt that on March 8 and 9, 1962, there had occurred some movement of bags containing packets of the counted ballot papers.

He has further stated that on inspection on the night of 9th March, 1962, he found that bags containing packets of used and counted ballot papers were removed from the Armoury Strong Room to the Treasury Double Lock and that a large number of such bags had gone out of the Treasury on the afternoon of 8th March, 1962, although it was a public holiday and that large number of such packets had also come into the Treasury on the morning of 9th March, 1962 and that on none of these occasions the petitioner nor his Election Agent was notified to be present (*vide* para 55 of the petition).

In para 58 of his petition, he has stated about the special features that came to the notice at the time when the recounting of Gonda East segment started after lunch on the 10th March 1962. He further mentions the reaction in the mind of P. S. Subramanian, Deputy Election Commissioner (P. W. 3) who was present at the time of recounting.

Further, in para 62, he states that by the evening of 10th March, 1962, it was quite obvious to the petitioner and it must have been quite obvious also to the Deputy Election Commissioner as well as to the Returning Officer that some time after the first count and before the recount the bags and packets containing the counted Parliamentary ballot papers relating to that segment had been got at and the ballot papers had been tampered with.

In para 68 of the petition, it has been stated that as in the case of Gonda East many of the ballot papers relating to Gonda West Assembly segment (excluding those relating to the 17 polling stations referred to in para 66) had also been tampered with.

In para 81 of his petition, submissions for moving the Election Petition have been made by him. From the statements mentioned above, it is clear that the allegations made about tampering and about the particulars are as categorical and as detailed as can possibly be made in the circumstances of the case. It was not possible for the petitioner to state when and in which particular place the persons responsible actually did the tampering.

153. Tampering of ballot papers does not come within the purview of corrupt practices defined in section 123 of the Representation of Peoples Act. As such the allegations of tampering would not come within the purview of section 83(1)(b) of the Representation of Peoples Act. The petition would certainly fall under section 83(1)(a) *ibid* which lays down that the petition shall contain a concise statement of the material facts on which the petitioner relies.

Order 6 Rule 2 of the Civil Procedure Code also lays down:—

"Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved".

154. The petitioner in his petition has given a detailed statement of the material facts on which he relies and also stated specifically that the result of the election has been materially affected by improper rejection of over 1780 votes cast for him in Gonda East and over 130 valid votes cast in his favour in Gonda West Assembly Segment and by improper acceptance of over 150 votes in Gonda East Segment and some 50 votes in Gonda West Segment in favour of Respondent No. 1.

Writ Petition No. 2718 of 1962 dated 1st April, 1963 was filed by the Respondent No. 1 in the High Court of Judicature at Allahabad. The judgment therein shows that this point was argued before their Lordships and it was held by the Hon'ble Mathur J. as follows:—

"In the Election Petition it was not only alleged that there was tampering of ballot papers after the counting of votes and before recounting, but the nature of tampering was also indicated in para 58 of the Election Petition".

There is thus no substance in the objection raised on behalf of Respondent No. 1 that the allegations of tampering were vague and suffer from want of necessary particular or that they were merely in the nature of inference.

155. Issue No. 4:—

I has been held in Issue No. 2 that the votes of Gonda East and Gonda West Segments which were counted as valid for the petitioner in the first count (there being only one voting mark in the cage of Star in those ballot papers) and which were rejected by the Returning Officer at the recount, were tampered with and their rejection was therefore, improper. The valid votes in favour of the petitioner in the first count which were improperly rejected by the Returning Officer at the recount as a result of tampering are given below:—

Polling Station No.		Ex. Nos. p.	Total
GONDA EAST	24	45/24—69	46
	27	46/1—68	68
	28	47/1—82	82
	32	48/1—136	136
	33	49/1—169	169
	6	50/1—8	8
	18	51/1—33	33
	34	52/1—112	112
	36	53/1—9	9
	37	54/1—30	30
	41	55/1—63	63
	42	56/1—12	12
	43	57/1—24	24
	44	58/1—14	14
	45	59/1—22	22
	46	60/1—67	67
	47	61/1—44	44
	48	62/1—73	73
	49	63/1—51	51
	50	64/1—76	76
	52	65/1—15	15
	53	66/1—10	10
	56	67/1—45	45
	57	68/1—54	54
	64	69/1—5	5
	65	70/1—34	34
	66	71/1—34	34
	68	72/1—12	12
	69	73/1—85	85
	70	74/1—25	25
	73	75/1—18	18
	74	76/1—58	58
	75	77/1—22	22
	78	78/1—30	30
	79	79/1—71	71
	81	80/1—23	23
	83	81/1—12	12
	84	82/1—13	13
	85	83/1—16	16
	88	84/1—71	71
Total of Gonda East			1792
GONDA WEST	14	85/1—20	20
	25	86/1—23	23
	33	87/1—3	3
	41	89/1—25	25
	42	90/1—24	24
	43	91/1—10	10
	45	92/1—8	8
	53	93/1—4	4

1	2	3	4
54	94/1—8	8	
57	95/1—2	2	
60	96/1—5	5	
66	97/1—2	2	
68	98/1—4	4	
Total of Gonda West			138
Total of Gonda East & Gonda West			1930

The above number of votes should be counted as valid votes in favour of the petitioner, except two ballot papers Ex. P. 47/2 and Ex. P. 52/37, as these ballot papers do not bear voting marks in the Star cage.

Thus, the total number of votes polled by the petitioner would be 80,439 plus 1,928 (total 82,367).

156. Issue No. 5:—

It has also been held in Issue No. 2 that the ballot papers of Gonda East and Gonda West Segments which were rejected by the Assistant Returning Officer as "R.N.M." and "R.M.B.A." in the first count but were validated by the Returning Officer at the recount in favour of Respondent No. 1, have also been tampered with by making a voting mark in the cage of the "BULLS" in those ballot papers after the first count and before the recount.

I hold that the acceptance by the Returning Officer of these ballot papers as valid in favour of Respondent No. 1 at the recount was improper. The following are the ballot papers of the above category:—

Polling Stn. No.	Ex. Nos. P.	Stamp at first count	Total
GONDA EAST	24	45/1—2	R.M.B.A. 2
		45/3—23	R.N.M. 21
	27	46/69	R.M.B.A. 1
		46/70—78	R.N.M. 9
	28	47/83—87	R.N.M. 5
		47/88—100	R.M.B.A. 13
	32	48/137	R.N.M. 1
	34	52/113	R.M.B.A. 1
		52/114—121	R.N.M. 8
	42	56/13—16	R.M.B.A. 4
		56/17—22	R.N.M. 6
	43	57/25	R.N.M. 1
		57/26—29	R.M.B.A. 4
	46	60/68	R.N.M. 1
	47	61/45	R.M.B.A. 1
		61/46—51	R.N.M. 6
	48	62/74—78	R.M.B.A. 5
		62/79—88	R.N.M. 10
	52	65/16—19	R.N.M. 4
	53	66/11—13	R.N.M. 3
	56	67/46—48	R.M.B.A. 3
		67/49—55	R.N.M. 7
	64	69/6	R.M.B.A. 1
		69/7	R.N.M. 1
	66	71/35	R.N.M. 1
		71/36	R.M.B.A. 1
	68	72/13—15	R.M.B.A. 3
		72/16—19	R.N.M. 4
	69	73/86—87	R.M.B.A. 2
		73/88—91	R.N.M. 4

	Polling Stn. No.	Ex. Nos. P.	Stamp at first count	Total
	70	74/26	R.M.B.A.	1
		74/27—31	R.N.M.	5
	73	75/19	R.M.B.A.	1
		75/20—25	R.M.N.	6
	74	76/59—74	R.N.M.	16
	78	78/31—39	R.M.B.A.	9
	88	84/72	R.M.B.A.	1
		84/73—88	R.N.M.	16
	Total of Gonda East			188
GONDA WEST	14	85/21—22	R.N.M.	2
	33	87/4—10	R.N.M.	7
		87/11—18	R.M.B.A.	8
	39	88/1—2	R.N.M.	2
		88/3—4	R.M.B.A.	2
	41	89/26—28	R.M.B.A.	3
		89/29—36	R.N.M.	8
	42	90/25—31	R.N.M.	7
	45	92/9—10	R.N.M.	2
	54	94/9—11	R.N.M.	3
	57	95/3—6	R.N.M.	4
	Total of Gonda West			48
	Total of Gonda East and Gonda West			236

The total number of votes of the above category are 238. They must be deducted from the total number of votes polled in favour of Respondent No. 1. The total poll in favour of Respondent No. 1 would, therefore, be 80,937 minus 238=80,701.

The effect of the above counting is that the total number of votes in favour of the petitioner exceeds the number of votes polled by Respondent No. 1 as also polled by the other remaining candidates.

The petitioner is, therefore, declared elected in the Election of 34 Gonda Parliamentary Constituency.

157. Issue No. 6:—

This matter has been dealt in Issue No. 2.

I have found that the Returning Officer designedly and illegally refrained from completing the counting of votes on the night of February 28, 1962 and early hours of 1st March, 1962 in violation of Rule 60 of the Conduct of Election Rules, 1961.

Rule 60 lays down:—

“Counting to be continuous—The Returning Officer shall, as far as practicable, proceed continuously with the counting and shall, during any intervals when the counting has to be suspended, keep the ballot papers, packets and all other papers relating to the election sealed with his own seal and the seals of such candidates or election agents as may desire to affix their seals and take sufficient precaution for their safe custody during such intervals”.

I hold that the Returning Officer designedly and illegally refrained from completing the counting of votes on the night of February 28, 1962 and early hours of 1st March, 1962 in violation of Rule 60.

158. Issue No. 7(a):—

It has been found that 1930 Ballot papers of Gonda East and Gonda West Segments were improperly rejected by the Returning Officer at the recount. 1928 votes should be counted as valid in favour of Petitioner. (Finding on Issue No. 4 read with Finding on Issue No. 2).

It has also been found that 236 votes were improperly accepted by the Returning Officer at the recount in favour of Respondent No. 1. These have been deducted from the total number of votes polled by Respondent No. 1 (Finding on Issue No. 6 read with finding on Issue No. 2).

(b) As a result the number of votes polled by each of the contesting candidates in 34 Gonda Parliamentary Constituency will be as below:—

Names of Candidates				Valid votes polled
1. Gir Hem Raj	..	..	..	27,429
2. Gupta Ram Ratan	..	..	..	80,701
3. Dandekar Narayan	..	..	..	82,367
4. Sinha M. K.	..	..	..	7,674

The above table would show that the petitioner in fact received a majority of valid votes at the Election of 34 Gonda Parliamentary Constituency, and I hold accordingly.

159. Issue No. 8:—

Respondent No. 1 has alleged in para 91 of his written statement as follows:—

"It is also noteworthy that at the time of the original counting, the petitioner had, in fact, 18 counting agents, as the Raja of Mankapur had his own men nominated as counting agents of the other two candidates".

This relates to the first counting held on 27th and 28th February, 1962.

Respondent No. 1 has adduced no evidence in support of their allegations.

I, therefore, hold that the counting agents of Respondents 2 and 3 were not nominated by Raja Sahib of Mankapur. So, its effect does not arise here.

160. Issue No. 9:—

Evidence of V. B. Bhadkamkar (P.W. 2) (Para 50) shows that when the abnormal features indicating tampering were detected in many of the ballot papers when the recounting of Gonda East Assembly segment was started, there was an uproar in the counting hall and after sometime the Deputy Election Commissioner, P. S. Subramanian (P.W. 3) directed that an account of such ballot papers be maintained in a special form (vide Ex. P. 26 and Ex. P. 27).

V. B. Bhadkamkar (P.W. 2) in his cross-examination has stated that he did not make any formal objection to the Returning Officer then and there about rejection or acceptance of the votes, as he was shocked.

P. S. Subramanian (P.W. 3) has also deposed that after looking to the abnormal features in the ballot papers in question, he found that it was a case of tampering. He immediately asked the Returning Officer to keep an account of the numbers of ballot papers of both the categories in accordance with the form specially prescribed by him.

The Petitioner Narayan Dandekar (P.W. 1) has specifically raised objection in Ex. P. 29 and Ex. P. 30 (vide his deposition paras 37 and 41).

There is abundant material to show that objections were raised to the improper rejection and improper acceptance of the ballot papers when the recounting was made by the Returning Officer.

Their Lordships of the Supreme Court in *Veluswami Thevar vs. Raja Nainar and others*—17 E.L.R. 181 has laid down as follows:—

"In determining whether the nomination of a candidate was 'improperly rejected' within the meaning of section 100(1)(c) of the Representation of the People Act, 1951, the scope of enquiry before the Election Tribunal is not limited to the particular grounds of disqualification which were raised before the Returning Officer and on the basis of which the nomination was rejected. It is open to a party to the election petition to plead that the candidate whose nomination was

rejected was also disqualified on grounds other than those which were raised before the Returning Officer, and the Election Tribunal has jurisdiction to enquire into the new grounds of disqualification; and, if the Tribunal finds on enquiry that the candidate was disqualified on any of the grounds mentioned in section 36(2), whether such ground was raised before the Returning Officer or not, it cannot hold that the nomination was improperly rejected within the meaning of section 100(1)(c)".

I therefore, hold that the petitioner is not stopped from raising the plea against the decision of the Returning Officer on the rejection or acceptance of the ballot papers.

161. *Issue No. 10:—*

I have found that the Returning Officer designedly and illegally refrained from completing the counting of votes in the night of February 28, 1962 and early hours of 1st March, 1962 in violation of Rule 60 of the Conduct of Election Rules, 1961.

I have also found that he has failed to keep the ballot papers in safe custody thereby ignoring the mandatory provisions of Rule 60 (Conduct of Election Rules, 1961).

While dealing with Issue No. 2, it has been mentioned that during the period the ballot papers were kept first in the Armoury Strong Room and then in the Treasury Double Lock, the Rules governing the keeping of valuables in the Treasury were not followed as laid down in the Treasury Manual and the Financial Hand Book Vol. V Part I. On the contrary all the Rules which could ensure the safety of the ballot papers while in custody of the Treasury Officer were violated, which facilitated the easy movement of the bags containing the ballot papers for taking them out of the Armoury Strong Room and bringing them to the Treasury Double Lock.

The report of the Nazir dated 7-3-62 Ex. R. 6 was faked to show an urgency to move the bags from the Armoury Strong Room to which the Returning Officer gave immediate approval, although the recount was to take place on 9-3-1962.

The above movements of the bags were designedly engineered to afford an opportunity for tampering with the ballot papers. In the circumstances mentioned above I find that there was breach of the duty on the part of the Returning Officer which resulted in tempering and consequently materially affected the result of the election.

162. *Issue No. 12:—*

I hold that the petitioner is declared elected to the election of 34 Gonda Parliamentary Constituency of 1962.

163. *Issue No. 11:—*

Ex. P. 110 was the order drafted by P. S. Subramanian, Deputy Election Commissioner, (P.W. 3), who was present at the recounting. The draft purports to be a directive to the Returning Officer not to declare the result of 34 Gonda Parliamentary Constituency until further instructions from the Commission and further that he shall immediately communicate to it the result of the entire constituency.

P. S. Subramanian (P.W. 3) has categorically stated that on a closer watch he found that this was a case of tampering. He immediately asked the Returning Officer to make an account of number of ballot papers of both the categories. For this purpose a form was prescribed (Ex. P. 26 and Ex. P. 27). He suggested to the Returning Officer to call for an explanation from the Assistant Returning Officer and when about 30 polling stations of Gonda East were counted, he immediately took the Returning Officer to an adjoining room and had discussions with him. He went to his residence. The Returning Officer himself rang up the Chief Election Commissioner, New Delhi, and told him about the happenings and thereafter he was informed by the Returning Officer that the Chief Election Commissioner wanted to speak to him on the phone. He then gave the Chief Election Commissioner a gist of what had happened there and also told him that they were keeping an account of all the ballot papers which seemed to be abnormal and in the meantime he was directing the Returning Officer not to declare the result.

The Chief Election Commissioner approved and said that he should be given the report when the counting was over.

He further says that he told the Returning Officer that he would sign a formal order directing him not to declare the result, a draft of which was given to him the previous night. This draft is Ex. P. 110. The Returning Officer did not give him the order for signature but assured him that he would not declare the result.

P. S. Subramanian (P.W. 3) asserts that he dictated the drafts to the Stenographer of the Collector in his presence. One was in respect of a report from the Returning Officer giving the gist and the other a formal direction to the Returning Officer ordering him not to declare the result for which he had taken the approval of the Chief Election Commissioner. Both these typed drafts (Ex. P. 109 and Ex. P. 110) were placed before him on which he made some changes and gave the Returning Officer for retyping. He did not accompany the Returning Officer after lunch to the place of recounting as he assured him that he would not declare the result. At about 3-30 or 4 P.M. on 11-3-62 the petitioner saw him and informed him that the result had been declared. But before this, he had already received information from the Returning Officer himself that the result had been declared.

P. S. Subramanian (P.W. 3) says that he was upset because his orders were not carried out by the Returning Officer who had actually cheated him.

The evidence of a responsible officer of the status of Deputy Election Commissioner stands un rebutted. The only person who could rebut was Returning Officer. He has not been examined by Respondent No. 1.

I, therefore, hold that the Deputy Election Commissioner, P. S. Subramanian issued a direction to the Returning Officer to withhold the declaration of the result and further that the Returning Officer did receive the direction but acted in violation of the said directive by declaring the result.

164. It was argued on behalf of Respondent No. 1 that it was not within the competence of the Election Commission to issue such a directive.

It was argued by the Advocate General that Article 324 of the Constitution of India does not lay down any procedure about how election shall be conducted and that the power of Election Commission is only of superintendence. Further that as the law stands, the Returning Officer was bound to declare the result after the recount and that the Election Commission has no power to set aside any order of the Returning Officer inasmuch as Article 324 cannot be interpreted to give a power or direction against law and the Representation of People Act being complete by itself, it is not open to any Court or Tribunal to search out a remedy if it is not there.

Reliance was placed on a decision in *G. F. F. Foulkes and others vs. A. S. Suppan Chettiar and another*—A.I.R. 1951 Madras 296 in which it was held as follows:—

“It is one thing to introduce terms into an Act of Legislature in order to give effect to its clear intention by remedying mere defects of language. It is quite another thing to imply a provision which is not in the statute in order to remedy an omission, without any ground for thinking that you are carrying out what the Legislature intended. To insert such a provision would be simply making, not interpreting the law. It is not the function of the Courts to repair the blunders that are to be found in legislation. They must be corrected by the legislature”.

165. The learned counsel for the petitioner contended that under Article 324 of the Constitution of India, the Election Commission has not merely power of superintendence but also has the power of direction and control of the conduct of all the elections vested in the Election Commission and, therefore, the Deputy Election Commissioner under Article 324 of the Constitution could issue direction to the Returning Officer to withhold the declaration of the result.

166. It is well settled that the word “Election” connotes the entire process of Election culminating in a candidate being declared elected [See 13 E.L.R. 117 (S.C.), 6 E.L.R. 186, 9 E.L.R. 183 1952 Allahabad 511 (para 8)].

Article 327 provides for the power of Parliament to make provision with respect to Elections to Legislatures subject to the provisions of the Constitution.

The Representation of People Act has been passed under Article 327 of the Constitution of India.

Section 20 of the Representation of People Act provides for general duty of Chief Electoral Officers of each State, but it is subject to the superintendence, direction and control of the Election Commission, the Chief Electoral Officer shall supervise the conduct of all elections in the State.

Section 24 *ibid.* provides for the general duties of the Returning Officers. They cover all things necessary for effectually conducting the election in the manner provided by the Act and Rules. This power also must be deemed to be subject to Article 324 of the Constitution of India and to section 20 of the Representation of People Act.

It has been held in *Moti Lal vs. Mangala Pd.*—15 E.L.R. 425 as follows:—

"The power contained in article 324(1) is a general power and the Election Commission, therefore, would be bound to carry out the specific provisions contained in any Act passed by the Parliament. But where the Act itself omits to provide for a contingency and does not contain any provision for meeting the situation, the general power conferred upon the Election Commission by Article 324(1) of the Constitution will come into play, and the Commission will have a right to pass the necessary orders, if they fall within the ambit of its powers enumerated in Article 324(1)".

167. Section 58 of the Representation of People Act provides for reference by the Returning Officer to the Election Commission if any ballot box is found to have been damaged or tampered with.

There is a lacuna in the Act as to what should be done if ballot papers are found to have been tampered with.

It would, therefore, be within the power of the Election Commission to issue such directive as may be necessary under the circumstances of the case.

It has been laid down in *Amin Ahmad vs. Nand Lal Sinha* A.I.R. 1953 Patna 293 (Para 7) as follows:—

"Article 324 therefore confers executive authority on the Election Commission to superintend, direct and control all elections to Parliament and to the Legislatures of every State".

The argument advanced by the learned Advocate General on behalf of Respondent No. 1 cannot be accepted. The ruling reported in *G. F. F. Foulkes & others vs. A. Suppan Chettiar and another* A.I.R. 1951 Madras 296 has no application to the instant case.

I, hold that the declaration of the result by the Returning Officer on 11th March 1962 was in violation of the direction lawfully issued by the Election Commission and it was in breach of the provisions of the Constitution of India and it materially affected the result of the election.

168. This is a unique case in the history of election, in which a candidate nominated by the Congress for 34 Gonda Parliamentary Constituency won the election on recount by tampering no less than 2166 votes with the active assistance of some of the Government Officials, who conducted the election.

The petitioner had written to the Election Commission for information and statistics relating to all recounting in Parliamentary constituencies throughout the country during the general election of 1962.

In response to this request the information given to him as stated by the petitioner was to the effect that recounting had been asked for in 27 Parliamentary Constituencies; it had been allowed only in 7 and that of those 7 there were no changes in the results after recounting in two cases, that in four cases although the figures changed, result of the election remained unaffected and that in only one case, namely that of 34 Gonda Parliamentary Constituency, the change in the voting figures was so large as to reverse the result of the election based on the first count. (See P.W.1 para 54 page 36 and Ex. P. 37).

169. C. M. Nigam was the District Magistrate, Gonda during the Election. He was also the Returning Officer for 34 Gonda Parliamentary Constituency.

Petitioner has filed letter No. C 869-25 XXV/CX/A dated July 20, 1962 (Ex. P. 11) from the Chief Secretary to Government, U. P. to Sri N. Dandekar (Petitioner).

At the time of the election there were departmental charges pending against him. This is indicated by letter (Ex. P. 11) referred to above. (See also para 7 of Petitioner's deposition).

He was instrumental in bringing about the success of Respondent No. 1 by corrupt contrivance and the *quid pro quo* was his promotion as Commissioner of Faizabad in November 1962 after the election, although he was previously superseded (*vide* Ex. P. 157 and Ex. P. 161).

170. The other officers involved in this affair are:—

- (2) R. B. Johri, Election Officer, Gonda.
- (3) A. S. Misra, Assistant Returning Officer, Gonda East and Gonda West Segments.
- (4) Krishna Madho Saran, Treasury Officer, Gonda.
- (5) Kali Chander Johri, Nazir, Collectorate, Gonda.
- (6) Maqbool Husain, Election Inspector, for suppressing the chart of allotment of counting tables to the counting staff in the combined office, Collectorate, Gonda.

In my opinion, this is a fit case for enquiry under section 137 of the Representation of People Act against the abovementioned six officials.

171. In fact, the Chief Election Commissioner accompanied by D. E. C. arrived at Lucknow to enquire into the above matter and after one day's enquiry at Lucknow they proceeded to Gonda on the morning of March 14, 1962 for the same purpose, but there they were served with an interim prohibitory order, restraining them from proceeding further with their investigation pending disposal of a Writ Petition submitted by Respondent No. 1 under Article 226 of the Constitution of India, against—

- (1) The Chief Election Commissioner.
- (2) The Deputy Election Commissioner.
- (3) The Chief Electoral Officer, U. P. Government,
- (4) The Returning Officer, 34 Gonda Parliamentary Constituency.

The above facts are admitted by Respondent No. 1 in para 78 of his written statement.

It is further stated that in the said petition presented on behalf of Respondent No. 1 by the Advocate General of Uttar Pradesh, the Lucknow Bench of the Allahabad High Court was requested to issue a writ in the nature of mandamus restraining the opposit parties Nos. 1, 2, 3 above from opening and inspecting any election paper relating to 34 Gonda Parliamentary constituency and from recording any statements or otherwise collecting information from the Returning Officer (opposite party No. 4 above) and his subordinate staff of Gonda in connection with the counting or scrutiny of votes in the said constituency.

The above facts are also admitted by Respondent No. 1 in his written statement.

172. I had sent for the record of the Writ Petition mentioned above. It has been admitted by Rama Nath Misra (R.W.1) that the application for stay in the above Writ Petition was moved on 14-3-62 at 8 A.M. at the residence of the Hon'ble Mr. Justice N. U. Bag of Lucknow Bench, as the Chief Election Commissioner had proceeded to Gonda in the morning.

Allegations made in the Writ Petition against the Chief Election Commissioner and Deputy Election Commissioner though supported by an affidavit of Rama Nath Misra (R.W.1) were found to be entirely baseless. The Writ Petition was finally dismissed on 6th September, 1962.

173. ISSUE NO. 14.

It is well established that when a candidate is charged with the commission of any corrupt practice, the charge is almost in all respect similar to a criminal charge and, therefore, the party who alleges corrupt practice must establish the charge conclusively beyond reasonable doubt. The standard of proof required is the standard applicable to criminal cases.

Respondent No. 1 in paragraph 5(i) (a) and (b) of his Recriminatory Petition has alleged that the petitioner himself and with his consent and approval Naurang Singh offered and promised to give the undernoted gratifications to Kapileshwar Sharma Pathak in order to induce him not to stand as a candidate at the election and not to file his nomination paper for the same.

"(a) That Shri Raghvendra Pratap Singh and Shri Naurang Singh shall use their influence and make every effort as important persons of the Swatantra Party and members of the Assembly to get Shri K. S. Pathak elected as member of the U.P. State Legislative Council in the next on-coming election for the same."

"(b) That the Petitioner and Shri Naurang Singh offered to pay Rs. 1,000 also to Shri K. S. Pathak, who accepted the offer and withdrew from the contest."

The above allegations are denied by the Petitioner.

Respondent No. 1 has no personal knowledge of the above allegations. His verification is to the effect that he was informed about the above allegations which he believed to be true.

174. Respondent No. 1 has made allegations of various corrupt practices against the petitioner and in support of the same, he has examined 40 witnesses (R.W. 23 to R.W. 62).

They witnesses may be classified in three categories as given below:—

- (1) Witnesses who posed as Swatantra Party workers during the election, but have come to depose for Respondent No. 1. Their names are given below:—

R.W. 23—Swami Nath Tewari.
R.W. 24—Dr. Mohd. Umar Shah.
R.W. 25—Gau Saran Rastogi.
R.W. 26—Salaru.
R.W. 29—Tribhuan Dutt Sharma.
R.W. 31—Bachchoo Ram.
R.W. 33—Nankau.
R.W. 35—Sheo Lagan.
R.W. 37—Balbhaddar Prasad.
R.W. 41—Ram Dularey.
R.W. 42—Shamshad Khan.
R.W. 49—Swarup Chandra.
R.W. 52—Ram Shankar.
R.W. 54—Ganga Ram.
R.W. 57—Ram Saran.
R.W. 58—Shyam Lal.
R.W. 59—Lakshmi Narain.

- (2) Witnesses who were congress workers and worked for Respondent No. 1 during the election. Their names are given below:—

R.W. 30—Sheo Prasad.
R.W. 32—Jamuna Prasad.
R.W. 39—Kanta Prasad.
R.W. 40—Dayal.
R.W. 46—Kailash Nath.
R.W. 50—Autar.
R.W. 53—Sukh Lal.
R.W. 56—Ram Chandra Misra.
R.W. 60—Tripurari Jaitly.
R.W. 62—D. P. Tandon.

3. Witnesses who did not belong to any party. Their names are given below:—

- R.W. 27—Sushil Chandra.
- R.W. 28—Bhiki Ram.
- R.W. 34—Samokhan.
- R.W. 36—Brahma Dutt.
- R.W. 38—Ram Kumar.
- R.W. 43—Ram Bahadur.
- R.W. 44—Sheo Prasad.
- R.W. 45—Ram Sagar.
- R.W. 47—Lal Bahadur.
- R.W. 48—Raghuvansh.
- R.W. 51—Ram Charitar.
- R.W. 55—Narain.
- R.W. 61—Badri Prasad.

175. Respondent No. 1 has examined Swami Nath Tewari (R.W. 23) and Raghuvansh (R.W. 48) on Issue No. 14.

Swami Nath Tewari (R.W. 23) deposed that in November 1961 he started election campaign for Kapileshwar Sharma Pathak, an Advocate of Gonda and worked for him till the 14th of January 1962. He says that for the purposes of election campaign Kapileshwar Sharma Pathak took a house of Merai Saha of Khargoopur Bazar on Rs. 20 per month. Three persons were employed for this work. They were Ram Dhiraj, Shyam Lal and Ram Khelawan.

He goes on to say that on the 14th January 1962 Kapileshwar Sharma Pathak did not come to Khargoopur and so he went to Gonda and met him where he was informed by Kapileshwar Sharma Pathak that he had dropped the idea of contesting the election and he directed him to go to Mohan Lal Vakil, where the petitioner used to say. He was given a letter of introduction. He met the petitioner there and was told that Dr. Siraj Ahmad shall be contesting the election for Gonda North Assembly constituency and he should go and see him. He also paid him Rs. 50 and directed him to continue with those workers who worked for Kapileshwar Sharma Pathak and also to employ some more persons.

He adds that on being questioned as to why he dropped the idea of contesting election, Kapileshwar Sharma Pathak said:—

“Ham nahin larege isliye ki hamse aur Dandekar Sahib se tai ho gaya hai ki yadi main jeet jaunga to aap ko M.L.C. banwa dooga”.

In his cross-examination he admits that Kapileshwar Sharma Pathak did not tell him who would get him nominated as M.L.C. He admits that the petitioner had nothing to do with the nomination of any person as M.L.C.

When he says that he was not a paid worker he contradicts his own version that he was paid Rs. 50 by the petitioner to continue with those workers who worked for Kapileshwar Sharma Pathak.

In his cross-examination he says that Kapileshwar Sharma Pathak did not file his nomination paper in the election of 1962. He considered that if Kapileshwar Sharma Pathak had contested the election, he would have won. It is, therefore, difficult to believe this witness that Kapileshwar Sharma Pathak was lured by promise that he would be elected as M.L.C. when he had every chance of success on his own merit for the seat in the Assembly.

176. R.W. 23 further says that Kapileshwar Sharma Pathak was to contest the election as an independent candidate. In this he is contradicted by Raghuvansh (R.W. 48) who is alleged to have worked as the clerk of Kapileshwar Sharma Pathak. According to Raghuvansh (R.W. 48), Kapileshwar Sharma Pathak was to contest the election from Gonda North Assembly constituency as a Swatantra party candidate. Swami Nath Tewari (R.W. 23) says nothing about the allegations made in para 5(i) (b) of the Recriminatory Petition. Kailash Nath (R.W. 46) does not name him as Swatantra Party worker at Khargoopur.

In his cross-examination he posed as a sympathiser of Swatantra Party in 1957 Election and says that Naurang Singh had contested as Swatantra Party

candidate in that election. This is obviously false as in the year 1957 Swatantra Party was not in existence.

He was a teacher in Khargoopur school of which Sri R. L. Gupta, Advocate for Respondent No. 1 was the Manager [See para 6 of the deposition of Tribeni Prasad (P.W. 16)]. He said he worked for Swatantra Party and now he appeared as a witness for the rival candidate. R.W. 23 is a tutored witness, his evidence is not worthy of any credence.

177. Raghuvansh (R.W. 48) stated that he was a clerk of Kapileshwar Sharma Pathak and he worked for him in his election campaign for Gonda North Assembly Constituency for about 3 months.

His above statement is false as will be clear from his cross-examination. He admitted that in 1962 his name was registered as a clerk of Sri Aditya Prasad Dixit, Advocate, but he adds that although his name continues to be registered as his clerk, he began working for Kapileshwar Sharma Pathak.

He further says that Kapileshwar Sharma Pathak had a mind to contest as a Swatantra Party candidate. In this also he is contradicted by Swami Nath Tewari (R.W. 23).

He further says that one month before the date of poll, Thakur Naurang Singh and Sri Dandekar visited Kapileshwar Sharma Pathak's house at 10-30 a.m. Naurang Singh asked Sri Pathak to refrain from contesting the election and he promised him to pay the entire expenditure which he might have incurred by that time and also promised to get Sri Pathak elected as M.L.C. after Naurang Singh gets elected to the Assembly. On Sri Pathak's informing them that he had incurred an expenditure of about Rs. 1000 they promised to pay the amount to him if he did not contest.

In his cross-examination he says that Swami Nath Tewari (R.W. 23) was called by Kapileshwar Sharma Pathak for the first time on the day when Naurang Singh and Sri Dandekar came to see him. In this he is contradicted by Swami Nath Tewari (R.W. 23).

Again he could not say who were the workers at the election. He could not say whether Kapileshwar Sharma Pathak was working for Ram Lal Gupta's election at that time. Ex. P. 123 which has been proved by Badri Prasad (R.W. 61) shows that Kapileshwar Sharma Pathak was working actively for Ram Lal Gupta, who was appearing in this case as Respondent No. 1's counsel. [See para 2 of the deposition of Naurang Singh (P.W. 15)].

This clearly shows that the allegation made by Respondent No. 1 that the petitioner had offered gratification to Kapileshwar Sharma Pathak to withdraw from election is false.

178. The learned counsel for Respondent No. 1 contended that the plea that R. L. Gupta Advocate was proposed as a congress candidate for the Assembly Seat from Gonda North did not find place in the written statement of the petitioner.

There is no force in the above contention, as the burden to prove the allegations entirely rests on Respondent No. 1. The petitioner has totally denied the allegation. He could rebut the evidence by showing the falsity of what the Respondent No. 1's witnesses have deposed.

It is significant to note that Respondent No. 1 has not put Kapileshwar Sharma Pathak in the witness-box in support of his allegations.

I find that Respondent No. 1 has failed to substantiate the allegations made in para 5(i) (a) and (b) of the Recriminatory Petition.

I hold that neither petitioner nor Naurang Singh, with his consent, promised any gratification to Kapileshwar Sharma Pathak to induce him not to stand as a candidate at the election for the U.P. State Legislative Assembly from Gonda North.

179. Issue No. 15.

In para 5(ii) of the Recriminatory Petition, it is alleged that on 13th January 1962 the petitioner and Naurang Singh visited Siraj Ahmad at latter's residence at Intia-thok, District Gonda and induced him to stand as an independent candidate at the election of Gonda North Assembly constituency with a view to divide the Muslim votes of the Congress and thus win election. It is further alleged that they offered the following gratification to Siraj Ahmad.

Naurang Singh offered to use his influence in region of Intia-thok Block Development and support Siraj Ahmad to the post of Block Pramukh. Further that the petitioner and Naurang Singh offered to give money to Siraj Ahmad to cover all his election expenses. The above allegations have been denied by the petitioner.

Respondent No. 1 has examined Mohammad Umar (R.W. 24), Gau Saran Rastogi (R.W. 25), Salaru (R.W. 26) and Shamsiud Khan (R.W. 42) in support of the above allegations.

Mohammad Umar (R.W. 24) says that he is a friend of Dr. Siraj Ahmad of Intia-thok. He was called by Siraj Ahmad on 12th January, 1962. The next day at about 9 A.M. the witness went to the house of Siraj Ahmad. On arriving, Siraj Ahmad told him that he had a mind to contest the election and wanted his advice. He also asked him to wait for some persons who were expected there. He goes on to say that at about 2 P.M., the very day Naurang Singh and Sri Dandekar arrived there. They took Siraj Ahmad from his dispensary to his residential house where the witness and one Gau Saran Rastogi (R.W. 25) were called. There he was informed that Naurang Singh wanted Siraj Ahmad to contest as an independent candidate for the Assembly seat of Gonda North Constituency.

On his expressing a doubt why Naurang Singh who was himself a candidate would induce Siraj Ahmad to contest for the same seat, Naurang Singh is said to have informed him that he was instrumental in making Mahadeo Prasad to contest the Assembly seat of that constituency as a Hindu Mahasabha candidate with a view that he could get the votes of Jansang candidate divided and wanted Dr. Siraj Ahmad to contest for the seat so that the Muslim votes which in the ordinary course would go to congress candidate would also be divided.

He further says that Thakur Naurang Singh assured that as he commanded sufficient influence in the Block Intia-thok he would exercise his influence for Dr. Siraj Ahmad in getting him elected as Pramukh of that Block. Naurang Singh further promised Gau Saran Rastogi that he would get him elected as Vice-President of the Block. This is an improvement by the witness as there is no allegation of promise to Gau Saran Rastogi.

He adds that petitioner also made similar promises to Siraj Ahmad.

180. Mohammad Umar (R.W. 24) posed as a Swatantra Party worker in the last election. He has now come to depose in favour of the rival candidate. According to him, petitioner and Naurang Singh induced Siraj Ahmad on 13th January 1962 to contest the election. He is contradicted by Raghuvansh (R.W. 48) who has deposed that Siraj Ahmad started his election campaign two months before the poll i.e., since about 18th December 1961.

It is not alleged in paragraph 5(ii)(a) of the Recriminatory Petition that the petitioner also promised to help Siraj Ahmad in getting him elected to the post of Block Pramukh.

Kailash Nath (R.W. 46) does not mention the name of this witness as the worker of Swatantra Party at Khargoopur.

The statement of Mohd. Umar (R.W. 24) in para 8 of his cross-examination discredits the entire evidence about the alleged promise of gratification to Siraj Ahmad or that he was induced by the petitioner to fight the election. In para 8 he has stated as follows:—

"Naurang Singh did not ask me that Muslim voters may be told to vote for him. Naurang Singh was standing as a rival candidate of Siraj Ahmad. Naurang Singh is a resident of this place and he was acquainted with the Muslim voters. Muslim voters must have been on his side also. On account of Siraj Ahmad's standing as a candidate for Gonda North Assembly seat, Naurang Singh was adversely affected, but he benefited also because he won the election".

It is, therefore, clear that there was a conflict of interest between Siraj Ahmad and the Swatantra Party and it is impossible to believe the story given by the witnesses that petitioner or Naurang Singh on his behalf had induced Siraj Ahmad to fight the election for the Assembly seat in Gonda North in order to divide the congress votes.

181. Gau Saran Rastogi (R.W. 25) claims to be a friend of Siraj Ahmad and is a supporter of Swatantra Party. He has now appeared as a witness for the

rival candidate. He says that he and Dr. Umar (R.W. 24) were called at the residence of Siraj Ahmad about a month before the date of poll.

In this he directly contradicts Mohd. Umar (R.W. 24) who has stated that Siraj Ahmad was taken from his dispensary to his residence by Naurang Singh and the petitioner where he made the proposal to Siraj Ahmad to fight the election. Dr. Umar (R.W. 24) had enquired as to who was to bear the expenditure. But Dr. Umar in his evidence does not say that he had made any enquiry in the matter of expenditure.

Both Mohd. Umar (R.W. 24) and Gau Saran Rastogi (R.W. 25) are at variance with each other regarding the conversation between them and the petitioner regarding the election expenses of Siraj Ahmad.

Raghuvansh (R.W. 48) has stated that Siraj Ahmad started his election campaign two months before the election. Therefore, the version of Mohd. Umar (R.W. 24) and Gau Saran Rastogi (R.W. 25) that Siraj Ahmad was induced to stand in the election a month before the poll is falsified.

182. Salarno (R.W. 26) deposed that he was engaged by Siraj Ahmad to work for him in his election on payment of Rs. 3 per day and he was asked to canvass for the petitioner also amongst the Muslim community. He was provided with two symbols—one having cycle and the other having Star symbol. He used to canvass in villages mostly inhabited by Muslims.

From the nature of his cross-examination it is clear that he is a tutored witness. He does not know how many candidates were contesting the election for Assembly seat from Gonda North, neither does he know the names of such candidates except Siraj Ahmad and Naurang Singh. He could not say when he commenced the work and unto which date he worked. He only remembers that he worked for about a month.

He further says that polling at Kalaina and Aye were on different dates. (See para 5 of his deposition).

He is obviously telling lies. Moreover, his evidence does not bring the case under section 123 of the Representation of People Act.

183. Shamshad Khan (R.W. 42) is a resident of Khargoopur Bazar. He knows Siraj Ahmad of Intia-thok. He was asked by Siraj Ahmad to help him in his election secretly and wanted that he should work for him so that Muslim voters may go for him as well as for the petitioner, who was cooperating with him. He says that he was given a letter which he handed over to the petitioner, who appointed him for doing the work of Siraj Ahmad on payment of Rs. 8 per day. He was paid Rs. 30 by the petitioner.

In his cross-examination he admits that he was in the congress and even now he is a congress man.

I disbelieve him when he says he worked for the petitioner or Siraj Ahmad. His evidence that he received payment of Rs. 30 from the petitioner or was getting Rs. 8 per day by him to work for Siraj Ahmad is obviously false. No reliance can be placed on his evidence. In fact, he was working for Respondent No. 1 (See para 11 of the deposition of Ram Saran R.W. 57).

The best evidence would have been that of Siraj Ahmad, but he has not been examined by Respondent No. 1 to support the allegations of corrupt practice contained in para. 5(ii)(a) and (b) of the Recriminatory Petition.

Dr. Mohd. Umar (R.W. 24), Gau Saran Rastogi (R.W. 25), Salarno (R.W. 26), Shamshad Khan (R.W. 42) claim to have worked for the Swajatra Party in the last election and now they appeared as witnesses for a rival candidate.

Their evidence as already pointed out is tainted and no reliance can be place on them. It was held in *Lachhman Singh Vs Harbarkash Kaur*—19 E.L.R. 417 as follows:—

"Wholesale desertion of a candidate by his devoted supporters and active workers during the election campaign and their appearance en masse as witnesses for the rival candidate who is seeking to unsettle him, is sufficient in itself to arouse the strongest suspicions as to the bona fides of the witnesses. It has been only on very rare occasions that anyone has voluntarily come forward and given evidence against anyone to whom he was genuinely well-disposed."

I find that Respondent No. 11 has failed to substantiate the allegations and I hold that neither petitioner nor Thakur Naurang Singh offered gratification to Siraj Ahmad or induced him to stand as a Muslim candidate for the U.P. Legislative Assembly from Gonda North Constituency.

184. Issue No. 16.

In para 5(iii) of the Recriminatory Petition, Respondent No. 1 alleges that Naurang Singh with the consent and at the instance of the petitioner visited Mahadeo Prasad in his village Basalatpur in October 1961 and induced him to stand as a candidate for the Assembly seat in Gonda North in order to divide the votes of the congress candidate.

Respondent No. 1 further alleged that following gratification was offered to Mahadeo Prasad by Naurang Singh:—

- (a) That Naurang Singh will by his personal influence, exercise through his son, Sri Shivraj Singh, who is the principal of the College at Tulsipur, Distt. Gonda, to get the son of the said Sri Mahadeo Prasad appointed as a teacher in that college.
- (b) That Shri Narsin Dandekar would meet all the expenses of Shri Mahadeo Prasad in respect of election in question and would also provide workers for the election of Shri Mahadeo Prasad and did so."

Respondent No. 1 has examined Mohd. Umar (R.W. 24), Tribhuan Dutt Sharma (R.W. 29), Balbhaddar Prasad (R.W. 37) and Ram Dulare (R.W. 41).

Mohammad Umar (R.W. 24) whose evidence has already been referred to in para 180 of the judgment says that Naurang Singh told him that he had set up Mahadeo Prasad as a Hindu Maha Sabha candidate so that Jan Sangh votes may be divided. He does not say anything about the alleged gratification. He does not say about the consent of the petitioner. There is nothing in his evidence to show that Naurang Singh had any influence with the Hindu Maha Sabha Party to obtain the party ticket for Mahadeo Prasad, who prior to this was the President of the Mandal Congress Committee and having resigned that position set himself up as a Hindu Maha Sabha candidate.

No reliance can be placed on the evidence of Mohammad Umar (R.W. 24). Besides, what he has stated is hearsay. Naurang Singh (P.W. 15) has denied that he had set up Mahadeo Prasad.

185. Tribhuan Dutt Sharma (R.W. 29) was a congress party worker for 45 years and a day before the poll he became a Swatantra Party worker for the petitioner. It is absurd that he would have done so.

He says that he became curious on seeing Mahadeo Prasad in the company of Naurang Singh and the petitioner two months before the poll and on being questioned about his association with the above named persons, he is said to have informed him that he had resigned from the Congress and that Naurang Singh and the petitioner wanted him to contest the Assembly election as a Hindu Maha Sabha candidate.

There is no evidence how the Maha Sabha party could be persuaded to give a ticket to Mahadeo Prasad.

Tribhuan Dutt Sharma (R.W. 29) is telling a falsehood when he says that he was told by Mahadeo Prasad that he was being asked by Naurang Singh and the petitioner to contest the Assembly seat as a Hindu Maha Sabha candidate. Tribhuan Dutt Sharma (R.W. 29) worked for the Congress (See para 16 of the deposition of Naurang Singh P.W. 15) and he is interested in supporting Respondent No. 1.

196. Balbhaddar Prasad (R.W. 37) says that Mahadeo Prasad is a relation of his and that Naurang Singh is their common friend. He says that some three months before the date of poll i.e. in November 1961, Mahadeo Prasad's son came to him and took him to his village where he found Naurang Singh and Mahadeo Prasad together. There he was informed by Mahadeo Prasad that Naurang Singh wanted him to contest Assembly election and he advised him that if Naurang Singh was benefited by that he should contest the election, and on being questioned Naurang Singh informed him that local votes would be divided if Mahadeo Prasad was set up as a candidate. Further that Naurang Singh told him that expenditure would be borne by the petitioner who was to contest the Parliamentary seat and as he is a Brahman the canvassing would be in the name of Brahman for Assembly as well as for Parliament.

He further says that Naurang Singh told Mahadeo Prasad that he would get his son appointed at Tulsipur where his son was working as Principal and asked him that if Mahadeo Prasad was his friend he should help him in that way. He and Mahadeo Prasad agreed to that proposal.

All that this witness has deposed is hearsay and is not admissible. It was for Respondent No. 1 to examine Mahadeo Prasad in support of his allegation.

187. Ram Dularey (R. W. 41) is a resident of Khargoopur Bazar. He says that he agreed to work for the Swatantra Party and was willing to be employed by the petitioner. He saw the petitioner and was engaged by him on Rs. 5/- per day. According to him, he was employed by the petitioner to find out secretly whether Mahadeo Prasad was working only for himself or for the petitioner also.

He says that he was informed by the petitioner that although Mahadeo Prasad was a Hindu Maha Sabha candidate, there had been a settlement between him and Mahadeo Prasad that the election campaign would be for him as well as for the petitioner.

He glibly gives exact dates of visiting several places on more than 10 occasions, a rare feat of memory which can hardly be believed. He could not remember the date on which Naurang Singh filed his nomination paper nor could he remember the date on which the petitioner filed his nomination paper. He could not remember the dates for filling the nomination paper for the Assembly election or for the Parliamentary election.

Ram Saran (R. W. 57) has stated in para 11 that Dularey and Samsad were present in congress camp on the date of poll in Khargoopur Imalia Polling Station. Ram Dularey claims to have worked for the petitioner in the election but he has now come to give evidence for the rival candidate. Judging as a whole it is clear that his evidence has been cleverly concocted to support Respondent No. 1, as such it must be rejected.

The best evidence would have been of Mahadeo Prasad himself. He has not been examined by Respondent No. 1. I find that Respondent No. 1 has failed to discharge the burden that lay on him to substantiate the allegations made in para 5(iii) of his Recriminatory Petition.

I hold that Naurang Singh did not offer any gratification to Mahadeo Prasad to induce him to stand as a candidate at the Assembly election from Gonda North.

199. Issue No. 17.

Respondent No. 1 in para 5(iv) of his Recriminatory Petition has alleged that in the area and circle of Pacharan Polling Station of Gonda North Assembly Segment of the constituency in question, the only candidates who had good prospects and appeal were Congress and Jan Sangh candidates. Naurang Singh with the consent and approval of Shri Dandekar and with the object of impairing the prospects of the Congress candidates and to gain advantage thereby for themselves, distributed money, through Shri Jamuna Prasad Tewari, Sarpanch of village Susgawa, who is also Sarpanch of Khargoopur and Imalia, to about 300 voters on 18-2-1962 in villages mentioned in Annexure 1 with the stipulation that those voters would refrain from going to polling stations and refrain from casting their votes.

Petitioner specifically denied that he gave his consent or approval to any such alleged acts of Naurang Singh. Petitioner stated that so far as his information goes Jamuna Prasad Tewari was a supporter of Respondent No. 1 in his election.

189. Respondent No. 1 has examined Ram Dularey (R. W. 41), Ram Bahadur (R. W. 43), Swarup Chand (R. W. 49), Ram Saran (R. W. 57) and Lakshmi Narain (R. W. 59).

The evidence of Ram Dularey (R. W. 41) is to the effect that on 16-2-1962 when he was leaving Gonda with a bundle containing copies of Nagrik, Naurang Singh asked the petitioner to give Rs. 500/- to him to be handed over to Jamuna Prasad Tewari of village Susgawan. He received Rs. 500/- from the petitioner. He was given the direction that Jamuna Prasad Tewari should be informed that money was to be distributed among such voters of the villages Anantwapur, Kamrawa, Lonawa, Imilia, Husainnagar, Naushahra, who did not like to vote for Swatantra Party and were staunch congress men. Rs. 2/- or Rs. 4/- were required to be given to every such voters who could either be brought round to

vote for the petitioner and if that was not possible offer should be made to such voter to stop him from casting his vote. He took the money and handed it over to Jamuna Prasad Tewari giving him the above direction.

The above evidence is contradictory to the allegations made in para 5(iv) of the Recriminatory Petition.

190. Ram Dularey (R. W. 41) says that at the instance of one Tribeni Prasad Pandey who was a Swatantra Party man, he went to the petitioner and was employed by him on Rs. 5/- per day for the purpose of election.

In fact, he was a congress worker and he was a polling agent of Respondent No. 1 during the election. Respondent No. 1's witness Ram Saran (R.W. 57) has testified that he had seen Dularey and Shamsad in the congress camp in Khargoopur Imalia Polling Station on the day of the poll. The above testimony of Ram Saran (R.W. 57) corroborates the evidence of Tribeni Prasad (P.W. 16) that Ram Dularey (R.W. 41) was a worker of the congress party.

Naurang Singh (P.W. 15) has deposed that Jamuna Prasad Tewari is a man of Ram Lal Gupta, Advocate (he appeared as counsel for Respondent No. 1) and his son resides in the house of Ram Lal Gupta. He further says that Jamuna Prasad Tewari was the worker of Siraj Ahmad and Respondent No. 1.

V. B. Bhadkamkar (P.W. 2) has also stated that Jamuna Prasad Tewari who is alleged in the Recriminatory Petition to have given money to the voters was the polling agent of Respondent No. 1. It is abundantly clear that Ram Dularey (R.W. 41) was a congress worker and I disbelieve him when he says that he was employed by the petitioner on Rs. 5 per day to work for him in the election.

191. Ram Bahadur (R.W. 43) is a resident of village Birmapur. He speaks about the distribution of money by Jamuna Prasad Tewari at the rate of Rs. 2 per voter to the voters of Birmapur.

The village Birmapur is not mentioned in Annexure I. I, therefore, reject the evidence of Ram Bahadur (R.W. 43) altogether, about the alleged distribution of money by Jamuna Prasad Tewari to the voters.

Swarup Chandra (R.W. 49) says that his uncle Rampat Tewari did the election campaign for Swatantra Party at Kamrawa and he also acted as Swatantra Party agent on the day of poll. At the instance of Rampat Tewari, he went to Jamuna Prasad Tewari, who gave him a letter for the petitioner. On the day of poll, he saw Jamuna Prasad Tewari who handed over Rs. 40 to him to be given to Rampat Tewari with the direction that he should distribute the money to those voters who were not favourable to Swatantra Party. He carried out the above behest and he was asked by Rampat Tewari to collect some persons of village Kamrawa and accordingly he collected 20 persons at about 3 P.M. who were paid at the rate of Rs. 2 per head and were asked not to go to poll.

The above evidence is contrary to the allegations made in para 5(iv) of the Recrimination Petition in which it is stated that money was paid through Jamuna Prasad Tewari and not Rampat Tewari.

He also mentions one Nankau (R.W. 33) as the person whom he met when he went to the petitioner with the letter of Jamuna Prasad Tewari.

This Nankau is an imposter. Reference to his evidence will be made later. In fact, there was no such person as Nankau in the employment of the petitioner. P.W. 1 has stated that he did not engage any one by the name of Nankau.

Jamuna Prasad Tewari has been found to be a worker of Respondent No. 1. The story given by Swarup Chand (R.W. 49) has been concocted to support the allegation that money was distributed to the voters by Jamuna Prasad Tewari at the instance of the petitioner.

Swarup Chand (R.W. 49) belonged to the category of those witnesses who posed as Swatantra Party workers during the election and later have come forward to support the rival candidate.

Not a single voter of Kamarwa has been produced by Respondent No. 1 who are alleged to have been paid money by Rampat Tewari.

I disbelieve the story of Swarup Chand (R.W. 49) that money was distributed to voters by Jamuna Prasad Tewari as alleged by Respondent No. 1.

192. Ram Saran (R.W. 57) is again one of those witnesses who worked for the Swatantra Party at the time of election, but have now come forward to give evidence in favour of the rival candidate.

He says that he is a relation of Jamuna Prasad Tewari and at his instance he took up work for the Swatantra Party and worked with one Swarup Chand (R.W. 49) of Kamrawa, Lakshmi of Lonawa Dargah and Sham Lal son of Jamuna Prasad Tewari.

He further says that he took a letter from Jamuna Prasad Tewari to the petitioner. On 17th February 1962 he was directed by the petitioner to see Tribeni Pandey and tell him that his money was deposited with him. He returned to Khargoopur and handed over the letter to Tribeni Pandey. The next morning Tribeni Pandey gave him Rs. 300 to be taken to Jamuna Prasad Tewari, which he did.

He says that out of this money, Jamuna Prasad Tewari gave Rs. 60 and asked him to distribute in the village Imilia to the labour class voters. He distributed the amount to those voters whom he considered to be the leaders and asked them that they should refrain from going to the poll and also that they should ask others not to give their votes.

In his cross-examination he names Ummad Ali, Nasrat, Bhagwati, Ram Sukh, whom he paid the amount separately at their respective houses.

None of the above persons have been examined by Respondent No. 1 to corroborate the story of this witness about the distribution of money. According to him, he spent Rs. 24, he has not accounted for the balance. His story of distribution of money to the above named persons cannot be believed.

193. Lakshmi Narain (R.W. 59) says that he took up the work of the Swatantra Party a month and a half before the poll. He states that he was given Rs. 100/- by Jamuna Prasad and was asked to distribute the amount amongst the persons of his village viz. Lonawa Dargah, so that they may not go to cast their votes. He says that he distributed the sum among the persons of his village.

In his cross-examination he admits that on the day of poll he was in his house looking after his own cultivation. He could not influence the villagers by his canvassing. He says that he found that people of his village were not amenable to his canvassing. He consulted Jagannath, Bhadur, Patan, Mian Baksh, Buddhu Khan and it was decided that if money was given they would agree to what he would tell them.

He further says that he gave the money to the above named persons with whom he had consultations. They were also voters. They took Rs. 4/- each. He spent only Rs. 20/-, there is no account of the balance. He had stated that there were 1000 voters in village Lonawa Dargah. Out of them only 200 or 250 voters went to cast their votes. If his story is to be believed, the distribution of money only to five voters makes no sense.

Not a single person who have been named by him has been examined to corroborate the alleged distribution. His story of distribution of money is fictitious and not worth considering.

All the above named witnesses except Ram Bahadur are of the type referred to in *Lachhman Singh Vs. Harparkash Kaur*—19 E.L.R. 417. It is apparent that they have been tutored to depose in favour of Respondent No. 1.

I find that Respondent No. 1 has failed to substantiate the charge of bribery. I hold that neither the petitioner nor Naurang Singh with his consent distributed money to the voters to prevent them from casting their votes.

194. Issue No. 18:—

It has been alleged in para 5(v) of the Recriminatory Petition that at the Polling Station of Bhangha, Baldaura Bazar, Kamrawan, Bhapti, Bhabni Sarai and Pachran on the date of poll i.e. 19th February, 1962 Shri Naurang Singh and the persons mentioned in the Annexure 2 with the consent of the petitioner promised to pay money to voters who promised to vote for the petitioner and Shri Naurang Singh and paid the amounts after it was ascertained that the voters had in fact voted for the petitioner and Shri Naurang Singh. The method of verification was that the electoral roll number of the voter was noted when they went

out from Swatantra Party camp for casting votes. These voters after marking the ballot paper in the compartments would come out with ballot paper unfolded to put in the ballot box that was placed in the Polling Station before the Presiding Officer where agents of parties were present and it could thus be seen for whom the voter had voted. When it had been noted that the voter had voted for Swatantra party, money was paid to him in the Swatantra party camp at these polling stations. The name of the persons who worked these arrangements are given polling-wise in Annexure II. These persons are alleged to have acted with the consent of the petitioner and Shri Naurang Singh.

Above allegations are denied by petitioner.

195. Respondent No. 1 has examined Ganga Ram (R.W. 54) and Narain (R.W. 55) in support of the above allegations.

Ganga Ram (R.W. 54) says that some 12 days before the date of poll, at the instance of Tribeni Pande who is his relation, he took up work for Swatantra Party. On the date of poll he went to Baidarwa Bazar polling station where Rameshwar Pradhan was working as agent for Swatantra Party. He reached there at 8 A.M. on the date of poll. He was asked by Rameshwar Pradhan to bring in the labour class voters. He should be given Rs. 2/- each to procure their votes for Swatantra party. He collected 10 or 15 such persons from village Asdha. Rameshwar Pradhan is said to have explained to them as follows:—

"Ham jab manege jab wahan tum ko parcha mile aur uspar nishan lagao aur khule hue lekar aao bakse ke pas mor kar ke chhcr do takı malum hojaye ki ham ko vote mila".

Those voters conceded to that proposal. Thereafter, Rameshwar Pradhan went inside the polling Station. He says that those voters used to go to cast their votes one by one and returned to the Swatantra party camp and sat there. After they had cast their votes, Rameshwar Pradhan came out of the polling station and paid them at the rate of Rs. 2/. He names the voters who had been paid in his presence.

He is also one of those witnesses who are alleged to have worked for Swatantra party and have now come to support the rival candidate.

In his cross-examination he admits that he did not go inside the polling station upto 5 P.M. He admitted that he had cast his vote. When he went inside the polling station to cast his vote, the officer there gave him a ballot paper for the Assembly and told him to go into the enclosure, mark the ballot paper there, fold the ballot paper and then come out and put the ballot paper in the ballot box. He followed the same procedure when he cast his vote for the Parliamentary constituency. He admits that an officer was sitting at the place where the ballot box was kept and he was seeing that every thing was being carried out according to the correct way.

His story that voters were paid by Rameshwar Pradhan after verification is false.

196. The plan of polling booth is illustrated in Annexure 1 of the Hand Book for Returning Officers Ex. P. 160 at P. 76.

It will be clear that from the seating arrangement of the Polling Officers and the placing of the ballot boxes, that it was impossible for any voter to show the ballot paper openly to polling agent of any candidate before actually putting the folded ballot paper inside the ballot box. The witness admits that an officer was sitting at the place where the ballot box was kept. It was seen that every thing was being carried out according to the correct way.

Shyam Lal (R.W. 58)'s evidence is about the casting of the votes at the Pachran polling station. He says that worked for the Swatantra party. He directed the voters that if they voted in such manner that after putting seal on the ballot paper they could bring the ballot paper unfolded under the pretext of getting the same folded so that he could be able to see the marking and on finding that they voted for Swatantra party, Rs. 2/- would be paid to each voters.

He further says that he used to go inside the polling booth and watched the voters casting their votes and after 5 or 6 voters had cast their votes, he used to come out and go to the Swatantra Party camp where money was being paid to the voters who had voted. In this manner he got the votes of 40 voters recorded.

197. While discussing the evidence of Ganga Ram (R.W. 54), I have already mentioned that it was not possible under any circumstance for a voter to show the ballot paper after marking it to the polling agent before putting it in the ballot box. The story of this witness cannot therefore be believed. Moreover, it is clear from his cross-examination that he was a polling agent of Siraj Ahmad. He had filed the agency form at 8 A.M., on the date of poll. His father also knew that he was to work as polling agent for Siraj Ahmad. He was questioned "What polling agency work you did for Dr. Siraj Ahmad?"

He replied:—

"Hamne wohan ko kam nahin kiya khare rahte the Main Swatantra party ka kam karta tha".

Then he was asked whether he betrayed Dr. Siraj Ahmad? He replied:—

"Diya. Dhokha Diya".

He further admits in his cross-examination that there were 7 polling agents of the 7 candidates inside the polling booth. The Presiding Officer's duty included the task of seeing that the secrecy of vote was maintained. The officers present in the polling booth were vigilant in the discharge of their duties.

The story given by this witness about the manner in which the voting was verified by him is not only absurd but is false.

Respondent No. 1 has failed to prove the charge of alleged corrupt practice. I hold that neither Naurang Singh nor the persons mentioned in Annexure II with the consent of the petitioner promised to pay money to the voters to vote for him.

198. Issue No. 19.

In para. 5(vi) of the Recriminatory Petition, Respondent No. 1 has alleged that on 19th February 1962 the petitioner and with his consent Shri Naurang Singh, Shri Trilok Singh, Shri Dashrath and Shri Amar Singh working respectively at polling stations Intiathok, Aya, and Kalaina, maintained abundant supplies of sweets, biris, cigarettes, chabena to entertain and feed the voters on the day of poll. The voters of the above noted polling stations were offered gratification in shape of food and sweets on the day of poll and voters were entertained so that they may cast their votes for the petitioner.

The above allegations are denied by the petitioner.

Respondent No. 1 has examined Salaru (R.W. 26) and Bachchoo Ram (R.W. 31).

The reading of paragraph 5(vi) would indicate that Naurang Singh and Trilok Singh worked at the polling station Intiathok while Dashrath worked at Aya and Amar Singh at Kalaina.

Salaru (R.W. 26) says that on the day of poll at Intiathok, he saw that Trilok Singh, worker of the petitioner had arranged for supply of Biris, Bhoonja, Chabaina, cigarettes to voters at the Swatantra Party camp and Trilok Singh used to say to the voters that as they were being fed by the petitioner they should bear in mind to vote for him. He says that at Kalaina polling station also the same procedure was adopted by Amar Singh.

It is clear from his cross-examination that he has been tutored. At Intiathok excepting Trilok Singh, he does not know the name of any other election workers. Similarly at Kalaina polling station, he knows only Amar Singh and no body else.

In para. 1 he has stated that he was working for Dr. Siraj Ahmad at Intiathok, in that case he could not have worked for the petitioner.

His replies in cross-examination indicate that excepting what he has come to depose about the arrangement of refreshment he knows nothing else. The consent of the petitioner in this connection has not been proved or alleged.

199. Bachchoo Ram (R.W. 31) says that 5 or 6 days before the poll he went to stay with Kantidhar Shukla of Tariparsuhiya. He was asked by him to go to Gonda and see the petitioner as he wanted to hire bullock carts. He was also given a bundle containing biris and cigarettes etc., which he was directed to hand over to one Dashrath at Aya polling station. He handed over the bundle to Dashrath who used to distribute biris etc. which were in that bundle.

This witness is also of the same category as those who say they worked for the Swatantra Party but have now come to give evidence for the rival candidate. He does not say who gave the bundle containing biris for refreshment. No link has been established between the petitioner with the distribution of biris and snacks. It is absurd to believe that these materials would be sent from Gonda. They can easily be purchased locally.

From his cross-examination it is clear that he has no idea about the location of polling station Aya. He does not even remember whether he delivered the bundle at the camp on the same day when he returned from Gonda or the next day or the day after.

Narain Dandekar (P.W. 1) in paras 104 and 105 of his evidence has denied that any refreshment was provided to the voters.

Naurang Singh (P.W. 15) in para 9 also denied that there were any arrangement for distribution of sweets, biris or cigarettes or chabaina to voters to cast their votes in favour of the petitioner or in his own favour. The evidence of Respondent No. 1's witnesses examined in support of this charge must be rejected as unreliable.

I hold that the petitioner or with his consent Trilok Singh, Dashrath and Amar Singh did not feed the voters to induce them to cast votes for him.

200. Issue No. 20.—In para 5(vii) of the Recriminatory Petition, it is alleged that Naurang Singh with the consent of the petitioner through his workers and servant Shri Autar Singh provided liquor to the scheduled caste voters of the villages Harai-jhuman, Basantpur Raja, Bhawanipur and Intiathok forming part of the constituency on the night between February 18/19th, 1962 i.e., the night before the day of the poll, in order to induce those voters to vote for the Swatantra Candidates and thereby obtained the votes of such of the electors who were of the scheduled caste.

Respondent No. 1 has examined a solitary witness Salaru (R.W. 26). He says that he was employed by Siraj Ahmad on Rs. 3/- per day to work for him and the petitioner. On the day of poll he went to Aya polling station at about 3 P.M. and saw the bullock cart of Kiyasat Khan of village Naushara bringing voters to Swatantra Party camp from different places. In the evening preceeding the day of poll he was asked by one Autar Singh to accompany him to the residence of Amar Singh and to take 6 bottles of liquor for being supplied to scheduled caste voters who were there. Autar Singh informed him that these 6 bottles of liquor were sent by Sri Dandekar for that purpose. He took the bottle of liquor to Amar Singh's residence and there some 15 to 20 Koris and Khatiks had assembled who were entertained and who were asked to go to the polling station and vote for Mr. Dandekar. They were also told that in case Mr. Dandekar won the election they would be further entertained with liquor.

201. Salaru says he was engaged for a short period by Siraj Ahmad to work for him and the petitioner. There is nothing in his evidence to connect the petitioner or Naurang Singh with the distribution of liquor.

He has no personal knowledge whether the liquor was supplied by the petitioner. He says that it was Amar Singh, who told him that these bottles were sent by the petitioner for the purpose of distribution.

In para 7 of his cross-examination he says that Amar Singh, is a resident of Hindu Nagar village, and that the Khatiks and Koris who were entertained with liquor were also residents of that village.

In para 5(vii) of the Recriminatory Petition, Hindu Nagar village is not in the list of villages where the scheduled caste voters are alleged to have been entertained with liquor.

The evidence of Salaru (R.W. 26) must therefore, be rejected.

Respondent No. 1 has not substantiated the charge of the alleged corrupt practice of providing liquor to the scheduled caste voters to induce them to vote for the petitioner. The finding on this issue is in the negative.

202. Issue No. 21.

The allegations of corrupt practice of undue influence as defined in section 123(2) of the Representation of People Act is stated in paragraph 6 of the Recriminatory Petition. It is alleged that corrupt practice under section 123(2) of the Representation of People Act was committed by the petitioner and with his

consent and approval by Raja Raghvendra Pratap Singh and also by other persons throughout Mankapur Assembly constituency. Names of these persons and polling stations are mentioned in Annexure III. Paragraphs 7, 8 and 9 of the Recriminatory Petition are merely descriptive of the Representation of People Act.

In para 10 it is alleged that the petitioner through his friends and associates Raja Raghvendra Pratap Singh, Shri Baldeo Singh, Shri Naurang Singh, Shri Ragho Ram Pande and Shri Ram Garib, had created a reign of terror against which an appeal was made to the Prime Minister through congress workers.

In para 11, it is alleged that if any elector would dare to oppose the candidature of the petitioner or Raja Sahib, his life, property and existence in the locality would be made impossible.

The above allegations of undue influence are denied by the petitioner.

203. Respondent No. 1 has examined Sheo Prasad (R.W. 30), Jamuna Prasad (R.W. 32), Nankau (R.W. 33), Raghuvansh (R.W. 48), Autar (R.W. 50), Ram Charitar (R.W. 51), Ram Shankar (R.W. 52), Sukh Lal (R.W. 53), Narain (R.W. 55), Ram Chandra Misra (R.W. 56) and Tripurari Jaitly (R.W. 60).

Sheo Prasad (R.W. 30) has deposed that he worked for congress till one day prior to the date of poll. No further says that whenever meetings for congress party were held all persons of his village could not attend the meeting being afraid of Ragho Ram Pandey.

In his cross-examination he admits that during the election of 1962 there were two or three congress meetings in his village Bahloipur. These meetings were arranged by one Girja Shanker. He attended all the meetings of the congress. These two or three meetings were held during a period of one month before the poll. In these meetings Ragho Ram Pandey was not present. He also admits that during the days when the congress meetings were held in his village Ragho Ram Pandey was not present.

It is, thus clear that his version in his examination-in-chief that all the persons of his village could not attend the meeting being afraid of Ragho Ram Pandey is false.

204. Jamuna Prasad (R.W. 32) is a resident of Gaurawa Kanungo, which is in Gonda East Assembly constituency. Its polling station was Siha Gaon. He deposed that Ragho Ram is a "sarkash" man in that locality and his associates are Gundas and Lapharies. Due to his highhandedness the election result had considerably affected as his associates used to threaten the voters to vote for him as well as for Mr. Dandekar.

The polling station of Siha Gaon is not mentioned in Annexure III filed by Respondent No. 1.

Evidence of Jamuna Prasad (R.W. 32) is to be ignored.

205. Nankau (R.W. 33) was examined by Respondent No. 1. He has deposed to the allegations not only on this issue but also in respect of allegations in issues 22, 26 and 27. He has deposed that he was an employee of Ragho Ram Pandey and had worked at his farm. He was directed by him to serve as a peon to the petitioner. He, therefore, went to the petitioner at the Kothi of Mohan Lal, Vakil, where petitioner was staying and he was engaged by him on Rs. 50 per month with board.

He says that some 10 or 12 days before the poll he went to Mankapur along with the petitioner where he stayed for some time and while coming back to Gonda he passed through Motiganj. Motiganj falls in Mankapur Assembly constituency. When the petitioner stopped there he found congress flags and posters and labels in Motiganj. Finding that there was no sign of Swatantra Party symbol and feeling that Motiganj fell in the constituency of Raja of Mankapur where Swatantra party had no force, he wrote a letter for Raja Sahib Mankapur and sent him with it to Mankapur. He handed over the letter and Raja Sahib after reading it called his Sipahi Ambika and told him that Motiganj was going against him. Ambika assured Raja Sahib that he would be going to Motiganj along with some persons and will set right the persons responsible for this.

He further says that Ambika reached Motiganj along with 15 persons. He names Chandrabhan, Loknath, Sheshdutt, Ishdutt, Mahadeo. The names of the remaining persons he does not know.

The above evidence was objected to by the counsel for the petitioner on the ground that name of Ambika Prasad is not mentioned in Annexure III nor the names of the persons who are alleged to have accompanied him to Motiganj. On this objection I passed the following order:—

“Annexure No. III gives the name of polling station and the name of agents and workers. Motiganj is in Vidyanagar polling station, but none of the persons mentioned by this witness are named in Annexure No. III in respect of polling station Vidyanagar. The evidence of this witness in the above respect is therefore disallowed.”

206. Evidence of Nankau (R.W. 33) has been objected to by the petitioner's counsel on the ground that Nankau is an imposter and his entire evidence should, therefore, be rejected as tainted and false.

Respondent No. 1 had filed list of witnesses in recrimination on various dates as given below:—

List No. 1 was filed on 2nd December, 1963.

Additional List No. 2 on 18th January, 1964.

Additional List No. 3 on 22nd January, 1964.

Consolidated List No. 4 on 23rd January, 1964 (This list supersedes the previous list).

Additional List No. 5 on 5th February, 1964 (relating to Annexure IX).

Nankau was examined on 27th January, 1964 as (R.W. 33). He gave his father's name as Radhika Prasad. He was re-called on 3rd April 1964 when he stated that he was called by another name i.e. Shyamadhar. He says that “in writing” whenever his name is taken down, he is mentioned as Shyamadhar, but in the village people call him Nankau. He admits that during the recording of his deposition before the Tribunal, he did not mention his name as Shyamadhar. The reason according to him is that he got himself employed by the petitioner under the name “Nankau”, but he did not inform him that he also had another name “Shyamadhar”. He says that in the “kutumb” register his name is recorded as Shyamadhar. His name as Nankau is not recorded anywhere in any Government paper. He also admits that he was convicted under section 411 I.P.C. in the court of Magistrate I Class, Gonda. He was prosecuted in the name of Shyamadhar. He says that he had informed Pandeyji about his conviction in the name of Shyamadhar but he did not mention about this to the petitioner. He says he concealed it from him because he was afraid that he might not get the employment.

The above statement is obviously false as he says that he went to Sri Dandekar for service about 20 days before he was convicted, although the prosecution was pending.

207. The first list of Respondent No. 1's witnesses did not contain the name of Shyamadhar or Nankau. The second list contained the name of Shyamadhar as No. 17 in the list. The third list which was an additional list to Lists 1 and 2, contained the name of Nankau at No. 13. This clearly indicates that Shyamadhar in List No. 2 and Nankau in List No. 3 were different persons. List No. 4 which was a consolidated list of all the three lists omitted the name of Shyamadhar, but the name of Nankau remained at No. 13 in the list. The witness Shyamadhar was thus given up when the list was consolidated in List No. 4.

It appears that subsequently Respondent No. 1 wanted to examine Shyamadhar as a witness but as he was given up, Shyamadhar was produced and examined under the name of Nankau on 27th January 1964.

In the first list Shyamadhar was given up because he was convicted for a criminal offence. It is thus clear that Nankau (R.W. 33) was an imposter. Actually Shyamadhar was examined instead.

R.W. 33's story that he was employed as a peon by the petitioner at the instance of Ragho Ram Pandey is palpably false and so also all that he has deposed in respect of other incidents in association with the petitioner or in connection with the election.

I, therefore, reject the entire evidence of Nankau (R.W. 33).

208. Raghuvansh (R.W. 48) whose evidence has been disbelieved in connection with Issue No. 14, has deposed that Keenu Singh, Sheo Raj Pande, Surya

Prasad, Ajodhya, and Swami Nath Tewari of Kauria Bazar used to work for Swatantra Party. These persons are "Zabardast" and "Badmash". They used to threaten the voters openly that as they were supporters of Swatantra Party, anybody who dared to support the candidature of congress candidate or Jan Sangh candidate and oppose the candidature of Swatantra Party candidate, he would be severely dealt with by them.

This witness does not mention the time of the incident; neither any time has been mentioned in paragraph 11 of the Recriminatory Petition.

In para 13 of his cross-examination he says that Swaminath Tewari, Sheo Raj Pande, Ajodhya Prasad and Suraj Prasad were the workers of Capt. Ram Garib.

He does not prove the consent of the petitioner.

209. Autar (R.W. 50) is a resident of village Sabarpur, which was a polling station also. He says that on the day of poll he along with Ghurey Chamar, Dharkhan Chamar, Gajadhar Chamar and Gouri Ahir were going to the polling station to cast their votes. In the way they met Bans Gopal and Abinash Chandra Tewari. They were workers of Raja Sahib Mankapur. When they stated that they were to support the congress candidate, they threatened them with dire consequences and that they would be beaten if they did not support the Swatantra Party.

In his cross-examination he says that they met Bans Gopal and Abinash Tewari at the crossing near the house of Ram Pher Ahir in the village. Bans Gopal and Abinash Tewari were standing there but he could not say why they were standing and that they did not beat him. He admits that he and his companion did go to cast their votes. In view of the above admission, his story about the threat given by Bansgopal and Abinash Tewari is obviously false.

Further, consent of the petitioner to the alleged acts of Bans Gopal and Abinash Tewari has not been proved.

210. Ram Charitar (R.W. 51) is a resident of village Rampur, which is in Vidyanagar polling station. He says that some 10 days before the date of poll, 15 or 20 persons came in Motiganj Bazar. They threatened the people that they should not oppose Raja of Mankapur and if they dared to do that, they would be beaten. He says that they were armed with pharsa and lathis and created reign of terror. They pulled down the congress flags and removed congress posters which were found in Motiganj Bazar. He names Madho Tewari, Lakhna Tewari, Sadhoo Singh, Nankau, Ambika Pahalwan out of those 15 or 20 persons who had come in a car. Annexure III does not contain the name of Ambika Prasad. The story of pulling down the congress flags and removing congress posters has not been mentioned in the Recriminatory Petition. He names Nankau also among the 15 or 20 persons who had come in the car. Nankau (R.W. 33) is an imposter. Actually it was Shyamadhar who was examined as Nankau. This witness, therefore, tells a lie when he includes Nankau in the party. No report to the police was made by the witness. He is just a chance witness. He does not live in Motiganj but went there for a stroll. The persons named by him did not give him any threat. He is obviously a got up witness and no reliance can be placed on his evidence. Moreover, consent or connection with the petitioner has not been proved.

211. Ram Shanker (R.W. 52) is a resident of village Khamaria Buzurg. He says that he worked for Raja Sahib of Mankapur in the last general election. On the day of poll he was at the polling station Patija Buzurg, where Parmeshwar Prasad, Ram Narain and Ram Kewal Swatantra party workers were present. He says that he kept himself busy in propagating that the voters should vote for Swatantra party otherwise they would meet with dire consequences. He also says that he told the voters to cast their votes in such a way that after affixing mark on the ballot paper they should bring the ballot paper unfolded upto the ballot box so that it could be seen by the Swatantra party agents.

This witness poses to be a worker of Raja Sahib of Mankapur and has now appeared as witness for the rival candidate. His name has not been mentioned in Annexure III. He knows nothing about the election except what he has come to state. He cannot name the voters to whom he gave the threat. It is obvious that he never worked for Raja Sahib Mankapur in the last election.

Satya Narian Pande (P. W. 17) has stated that Ram Shanker (R. W. 52) was a worker of Respondent No. 1 in the election.

It is impossible to believe that any polling agent could have seen the ballot paper after they were marked by the voters and before they were put inside the ballot box. The story given out by this witness is absurd.

Consent or connection of the petitioner has not been proved by this witness. He says that he worked for Raja Sahib Mankapur in the last general election.

212. Sukh Lal (R.W. 53) is a resident of village Durgapur. It is within Ranijot polling station. He says that on the day of poll he went to Ranijot polling station. There he saw Mahadeo, Janki and Ganga Ram working for the Swatantra Party. He says that these persons used to direct the voters they should vote for Swatantra party candidate and should put their votes in the ballot box only when it is noted by the Swatantra Party agents inside the booth. He makes a general statement that Ranijot fell in the Zamindari of Raja Sahib of Mankapur who was influential because of the fact that the public was terror-stricken as Raja Sahib used to get those persons beaten, their houses burnt in case they opposed him on any point.

In his cross-examination he admits that no house of any person of Ranijot was burnt by Raja Sahib of Mankapur or by his men. He was polling agent of Devendra Nath Misra at the polling station Bandrahi which is 3 miles from Ranijot polling station. He was at Bandrahi polling station from 10 A.M. to 12 noon. Then he contradicts himself when he says that he went to Ranijot and was there from 11-30 to 12 noon, as he was sent there by Devendra Nath Misra.

His explanation about going to Ranijot on the asking of Devendra Nath Misra cannot be accepted specially when no report to the Presiding Officer is alleged or proved. It is obvious that he never went to Ranijot polling station.

Connection of the petitioner has not been proved.

213. Ram Chandra Misra (R.W. 56) is a Munim of a shop belonging to Respondent No. 1 at Kanpur. He says that 5 or 6 days before the date of poll he was deputed at Motiganj in the election work. There he found that Swatantra Party candidate had terrorized the public. On the day of poll he went to Vidyanagar polling station. At mid day he saw Sadhu Singh, Brinda Singh workers of Swatantra party threatening the women voters at a distance of some 20 yards from the polling station. The above incident was witnessed by Sheo Raj Singh and others. He says that an application was made by Sheo Raj Singh to the Presiding Officer at that polling station. Mundar Singh Swatantra party worker threatened to beat congress worker and agent named Bhola Nath Shukla. A written report was prepared in respect of this incident which was written by Sheo Raj Singh and signed by him. The original of this report is marked Ex.R.202A.

On the day of poll at about 7 P.M. after the close of the poll, Dargahi informed him that Sadhoo Singh, Ram Balak Singh, Bijai Pratap Singh, Hawaldar Singh, Ram Nath Singh and Lal Singh had destroyed his Matar field and had threatened him that as he had worked for congress, he would be beaten and will be forced to go to Pakistan. He himself was threatened by Sadhoo Singh as follows:—

"Ham tumhare patte ukhar denge aur tumhare munh men kutte mutwa denge aur jan se mardalenge."

He sent a telegram at Balrampur office where men of Ram Ratan Gupta used to live. He sent telegrams to the District Congress Committee, Gonda, District Magistrate, Gonda, and to the Superintendent of Police, Gonda. The contents of telegram is Ex.R.202/B. At about 11 P.M. police force arrived at Motiganj and some arrests were made. Bijai Pratap Singh, Swatantra party worker was arrested there. A written report was prepared in connection with the incident of Dargahi which is Ex.R.202/C.

In his cross-examination he says that he does not know whether the Police Officer concerned made any enquiry about the matter complained of, but he admits that no case was launched as a result of the report Ex.202/C, neither does he know whether any enquiry was made about this report.

He admits that he did not make any report to the Presiding Officer of the Polling Station about the threat given to the women voters. Although the women voters were escorted by Naurang Prasad, Ramdhir Singh, they did not make any report to the Presiding Officer of the polling station.

Respondent No. 1 has not examined Dargahi or the workers who were threatened in respect of the first position Ex. R. 202A.

214. Sarju Prasad (R.W. 5), Record-Keeper Police Office, Gonda was summoned with First Information Reports. He produced the application by Ram Chandra Misra (R.W. 56) in charge of Congress Office Motiganj on the basis of which a First Information Report was prepared. He produced the extracts Ex. R. 200, 201, 202, 204. Ex. R. 202 is a telegram attached to it and an application of Ram Chandra Misra.

In his cross-examination he stated that he does not know who made the investigation and what was the result of that investigation. An application made by Rama Nath Misra (R.W. 1) was also produced by this witness but he could not say whether any investigation was made in this connection or what was the result of the investigation, if any.

It is clear that no action was taken on the complaints made by Ram Chandra Misra (R.W. 56) in respect of the incidents about which he has deposed. It can reasonably be inferred that reports made by Ram Chandra Misra implicating the Swatantra party workers must have been false. No connection with the petitioner has been proved.

Narain Dandekar (P.W. 1) in para 106 to 108 has denied that any undue influence by Raja Sahib was exercised or that he gave consent.

215. Tripurari Jaitly (R.W. 60) deposed that on the 1st of February 1962 when the Prime Minister visited Gonda about 150 congress workers with congress flags were coming from the side of Sadullanagar. When they were near Raja Sahib's kolhi, they were attacked by Baldeo Singh, Sukh Pyare Singh and Ambika with a group of about 125 persons with lathis. Several workers were beaten and congress flags were snatched. A group of 30 or 40 persons under the leadership of Sukhpyare Singh removed those flags and planted the flag of Swatantra party. When the witness tried to prevent them from doing so, they threatened to beat him. He further says that while he was proceeding in a jeep from Balrampur house in Mankapur a jeep of Swatantra party coming from the opposite side collided with his jeep near Motiganj. His jeep was thrown in the khud, while the Swatantra party jeep returned to Mankapur. Two persons accompanied by him became unconscious. They were brought to the Gonda Hospital. He sent a report from the hospital about this incident to the Police. Sarju Prasad Srivastava (R.W. 5) deposed that no action was taken on this report as it was not a cognizable offence.

The evidence of Tripurari Jaitly (R.W. 60) about the accident or about the clash between the congress and the Swatantra party workers when the Prime Minister came to Gonda is of no consequence.

216. It was stressed on behalf of the petitioner in the course of the argument that the Respondent No. 1's witnesses had not proved consent of the petitioner in respect of the alleged undue influence and threat given out by the Swatantra party workers to the voters or congress workers. In reply to the above contention the learned counsel for Respondent No. 1 on the authority of a decision in *Bhagwan Datt Shastri Vs. Ram Ratan Gupta and others* and *Bhagwan Datt Shastri Vs. Badri Narayan Singh and others*—11 E.L.R. 448 submitted that the petitioner will be guilty for the acts committed by his workers and agents when it is established that they gave threats to the voters.

In 11 E.L.R. 448, the finding of the Tribunal held on the facts and circumstances of the case that the conveying of voters must have been done with the connivance of the Respondent and that he was guilty of corrupt practice under section 123(6) of the Representation of People Act 1951 was accepted by the Supreme Court with the following:—

Oblter—"The questions as to the limits of the doctrine of agency in election matters and the exact scope and effect of the statutory definition of 'agent' may require to be carefully considered by the court when they become necessary in a proper case as these are important questions bearing on the whole structure of elections run on party lines".

The rulings reported in 11 E.L.R. 448 has no application to the law after the amendment of 1956 and 1961 in the Representation of People's Act in its relevant provisions.

Under the old Act as it stood in 1951, a reference to section 100(2)(b) and section 100(3)(a) would show that the language used was:—

“By a candidate or his agent, or by any other person with the connivance of the Candidate or his Agent”.

After amendment of 1956 the changes in Section 100 are noticeable in this respect in paragraph 100(1)(b) and (d) (ii) which reads:—

“By a returned candidate or his Election Agent or by any other person with the consent of a returned candidate or his Election Agent.”

In the Act amended upto 1961 we find in Section 100(1)(b) the same language viz:—

“By a returned candidate or his Election Agent or by any other person with the consent of a returned candidate or his Election Agent.”

From the above it will be seen that the Legislature has clearly brought about a change in the law in 1956 and 1961 from what it was in this respect in 1951.

In *Dharanidhar Mohapatra Vs. Pradipta Kishore Das and others*—17 E.L.R. 427, it has been held as follows:—

“Under section 100(1) clauses (b) and (d) (ii) of the Representation of the People Act, 1951, as amended in 1956, where a corrupt practice has not been committed by the candidate himself or his Election Agent but by any other person (including an agent other than an Election Agent) it must be proved that that person had acted with the consent of the candidate or his election agent”.

See also 17 E.L.R. 373 and 18 E.L.R. 209.

I find that Respondent No. 1 has failed to substantiate the charge of undue influence levelled against the petitioner. Respondent No. 1 has failed to prove any connection or consent with the petitioner.

I find the issue in the negative.

217. Issue No. 22.—The allegations of corrupt practices in respect of this issue are contained in paragraphs 18, 19, 20 and 21 of the Recriminatory Petition.

The petitioner denied the allegations that he or his workers or agent canvassed in support for him on the ground of caste or community.

Respondent No. 1 has examined Nankau (R.W. 33), Samokhan (R.W. 34), Brahma Dutt (R.W. 36), Balbhaddar Prasad (R.W. 37), Ram Kumar R.W. 38 and Tripurari Jaitly (R.W. 60).

Evidence of Nankau (R.W. 33) must be rejected *in toto* for the reasons given in paragraphs 206 and 207 of the judgment.

In paragraph 15 of his deposition, (R.W. 33) stated that although he did not know how many Brahmin houses were there in Maskinwa, but he knew that in the meeting alleged to have been addressed by the petitioner, the majority of the persons were Brahmins.

He came to know the Brahmins in this way that it was given out in the speech—“those who are Brahmins please raise their hands” and they raised their hands. His evidence shows that the meeting was attended by both Brahmins and non-Brahmins.

It is impossible to believe that the petitioner would indulge in such conduct thereby alienating sympathies of the non-Brahmin voters.

Paragraph 18 of the Recriminatory Petition does not contain the material particulars regarding time and place. As such it is too vague. This issue has to be limited to the contents of paragraphs 19, 20 and 21 of the Recriminatory Petition. Paragraph 19 is limited to Annexure V and paragraphs 20 and 21 are limited to performance of the Yagya and the meeting thereafter.

218. Balbhaddar Prasad (R.W. 37) says that he was asked by the petitioner to work in polling stations Kalaina, Arjunpur, Aya, Karamdih, Jāhandariya and Basalatpur where 50 per cent of the population consisted of Brahmins.

He further says that the petitioner had asked him to canvass in those areas in the names of Brahmins and that they should support his candidature. The above story of the witness cannot be believed as it would be against the interest

of the petitioner to canvass for Brahmins' votes only in those areas where, according to the witness, the remaining 50 per cent of the population comprised of non-Brahmins voters.

His evidence was considered on Issue No. 16 and he was disbelieved. Although he says that he canvassed for the petitioner in the area of about 6 polling stations, he could not say who were the workers of petitioner in those polling stations. This shows that he never worked for the petitioner or canvassed for him.

219. Ram Kumar (R.W. 38) says that he saw Swatantra party workers at different places making appeal for the petitioner in the following words:—

“woh kah rahe the ki yeh bahut bare Pandit hain aur jogya hain inhin ko vote diya jaye yeh dharampat ki raksha karenge yeh jati Brahmin hain”.

This story is not mentioned in paragraphs 19, 20 and 21 of the Recriminatory Petition. Allegations in paragraph 18 are of a general nature. Therefore, the above evidence of this witness must be ignored.

In para 4 of his deposition he says that after the performance of the Yagya a meeting was held which was attended by some four or five thousand persons. One Panditji who was some Shastriji and who had participated in the Yagya was asked by the petitioner to address the meeting. This witness could not say about the entire speech of Shastriji but was able to tell some portion of it, which he says, was as follows:—

“Yeh bahut bare pandit hain yeh vote dene ke kabil hain inhin ko vote diya jaye aur yeh Brahmanut dharma ka raksha karenge and Ram Ratan Gupta ko vote dena mahan murkhata hai woh jat ka baniya baaman sarabi gheos lene wala mazdooron ka khoon choosne wala isko vote dena mahan paap hai”.

This speech making an appeal on the ground of Brahmins Vs. Bania has not been alleged in paras 20 and 21 of the Recriminatory Petition; it cannot, therefore, be considered.

In para 5 this witness says that the petitioner also addressed the meeting in the following words:—

“Ham bhi Brahman hai aap logon ke jati bhai hain aur Bashist gotra hamara bhi hai aur aap log bhi Bashist gotra hain aur agar aap log hamko vote denge to jahan tak ho sakega aap longon ki har prakar se subdha karenge aur dharam ka palan hoga Brahman jati ka mahatv barhaga aur Ram Ratan Gupta ko vote dena mahan bhool hai kyoki woh jat ka baniya mazdooron ka khoon choosne wala sharabi jhoot bolne wala jo unko vote denge woh Brahman jati ko kalank lagana hai athwa mahan paap hai”.

There is no mention in the Recriminatory Petition about the above speech said to have been given by the petitioner.

No reliance can, therefore, be placed on this witness that the petitioner addressed the meeting in the manner stated above.

220. Kamta Prasad (R.W. 39) says that during the Yagya, workers of the petitioner were making the propaganda that they should support Baba Dandekar. He also says that after the Yagya there was a meeting which was addressed by Panditji and thereafter by the petitioner. He does not say what were the words uttered by the petitioner but he speaks about his impression which was created in his mind about the speech—It was to the effect that the petitioner was a Dharmi man and a pious man, and they should all support his candidature. He does not say that the canvassing was by way of an appeal on ground of caste or community.

Ram Kumar (R.W. 38) and Kamta Prasad (R.W. 39) have contradicted each other about the time of the commencement of the meeting and when it ended.

221. Dayal (R.W. 40) has deposed that while Yagya was being performed by the petitioner, his workers kept themselves busy in the Mela propagating that the petitioner has performed the “Havan” and was a pious and good man whereas Gupta was a drunker and a bad man. They made an appeal for the support of the petitioner on that ground. There is no such allegation in the Recriminatory Petition that canvassing was done by Swatantra party workers during “Yagya”.

The above evidence does not prove that the canvassing was done on the grounds of caste and community.

He further says that after the performance of the Yagya, a meeting was held which was addressed by a Pandit who had participated in the 'Havan' and also by the petitioner.

The speech given by the Pandit, according to the witness, was in the following words:—

"Ram Ratan Gupta ko vote nahin dena hai yeh anda khate hain sharab pite hain vote do to Dandekar ko do yeh Brahman ham achha kam karte hain uttam Brahman hain".

He says that the speech given by the petitioner was as follows:—

"Vote Ram Ratan Gupta ko nahin dena hai woh mazdooron ka khoon choosta hai sharab pine wala hai woh Baniya hai ham Brahman hain".

222. Lal Bahadur (R.W. 47) says that at the time of the Yagya, the petitioner's workers were propagating "people should support petitioner as he was pious and religious minded".

He further says that the speech of Shastriji was as follows:—

"Baba Dandekar dharamwala hain Pujari admi hain inko vote diya jaye jab Dharam rahi to sab kuchh hai Gupta jo khare hain woh Krishtani hai chamron ke yahan kha leta hain aur gosht machhli kha let hain jab dharam na rahi to aur kuchh hokar ka rahi".

According to him, the petitioner said as follows:—

"Ham Brahman admi hai aur Dharam karte hain Jo samjha jaye to kiya jaya Purnyatma admi hain isliye hamre ka vote do Dharam rahi to sab kuchh hai aur dharam na rahi to kuchh nahin hai".

223. According to Tripurari Jaitly (R.W. 60), the speech given by Shastriji was as follows:—

"Aap sab ne dekha ki Pt. Baba Dandekar kitne bare karmat Brahman hain aur unhon ne itna bara Yagya sampann karaya Brahmantav ki raksha ke liye aur Janeoo nikal kar unhon ne jikhaya is janeoo ki raksha ke liye aap sab Brahmanon ka punit kartavya hai ki aap apne Brahman bhai Pt. Dandekar hi ko vote den Ram Ratan Gupta maliksh hai madra mans ka sevan karta hai Babhichari hai ayse admi ko vote dene se Brahman jaat ka patan hoga".

According to him the above speech of Shastriji was followed by a speech of the petitioner in the following words:—

"Main aap hi ka gotra ka Bashisht Brahman hoon aur yeh jan kar ki Babhani Piar men aap sab Brahman bhi mere hi gotra ke hain vahan se khare hone ka sahas kiya aur agar aap sab chahte hain ki yeh mans madra khane wala maliksh baniya ke mukable men ek karm kandi Brahman ki jeet ho to aap mujhe vote den, is se Brahman dharam ki raksha hogi".

The witnesses named above are at variance as to the words used by the petitioner in his speech while addressing the gathering after the Yagya.

The petitioner in his cross-examination has affirmed that he or Raja Sahib of Mankapur or any one else who spoke in the meeting made no reference whatsoever to the personal character or habits or religion or caste or any other personal matter relating to Respondent No. 1; any witness who had deposed to the contrary was uttering falsehood; also they made no reference whatsoever to their own personal affairs or religion or caste and any statement to the contrary was false.

He further said that he did not ask for votes on the ground of his religion or caste or piety. No one who spoke at the Swatantra party meeting asked for votes for him on the ground of religion, caste or his pious habits or character, nor did any one suggest that they should not vote for Respondent No. 1 because of his alleged conduct, character or habits.

The allegation that his workers or those of Raja Sahib were canvassing in and around the Mela at the Sarvan Pakar Mela or otherwise on grounds of religion, caste or community and character etc. is totally false. Any witnesses of Respondent No. 1 who may have stated to the contrary were uttering falsehood.

In *Biresh Misra Vs. Ram Nath Sharma and others*—17 E.L.R. 243 it has been held as follows:—

"In cases where the nature of a corrupt practice depends upon the words used by the candidate at a meeting, oral testimony in support of the actual words used must be viewed with great care and caution, and, apart from the fact whether certain words were used or not, unless the entire context of the speech is before the Tribunal, isolated words, even if proved, may not give a true import of the speech, and would not be sufficient to prove the commission of the corrupt practice of undue influence."

I find that Respondent No. 1 has failed to substantiate the allegations that the petitioner canvassed in the constituency on grounds of caste and community.

224. *Issue No. 23.*—This issue relates to the allegations made by Respondent No. 1 in para. 19 of the Recriminatory Petition. There is a reference to a pamphlet Annexure V circulated by the petitioner during his election. It is alleged that the contents of it were designed to emphasise the fact that the petitioner was a high class Brahmin coming from religious minded Brahmin family, in order to appeal to caste and communal sentiments of that community.

It has been admitted by the petitioner that the pamphlet Annexure V was issued with his consent by V. B. Bhadkamkar, his Election Agent (P.W. 2).

Petitioner in reply to paragraphs 19, 20, and 21 of the Recriminatory Petition has mentioned the circumstances under which Annexure V was issued by him. He has referred to a spurious publication styled "Vichar Bharti" without date and Editor's name. It is Ex. P. 134.

According to him, in this spurious publication certain allegations and innuendos were published affecting the personal character, conduct and religion of the petitioner and were calculated gravely to prejudice the prospects of petitioner's election. In particular, it was alleged that the petitioner was a Christian but was deceiving the electorate by posing as a Brahmin. It was simply to counter the effect of these false allegations that the pamphlet Annexure V was issued containing statements of facts. The petitioner denied that the said pamphlet was designed to emphasise that he was a high class Brahmin or with any object of appealing to the caste and communal sentiments of the Brahmin community. (See paras 110 and 111 of P.W. 1's deposition).

225. Ex. P. 134 is the copy of the spurious "Vichar Bharti" which contains a column "Kya Dandekar Brahman Hain".

On reading Ex. P. 134 and Annexure V it is abundantly clear that the details were given to meet the question "Kya Dandekar Brahman Hain" posed in the spurious Vichar Bharti Ex. P. 134. The contents of Annexure V would go to show that spurious Vichar Bharti was published on 16th February 1962.

Narayan Dandekar (P.W. 1) has stated in para 110 that Ex. P. 135 was issued three or four days later.

Tribhuan Dutt Sharma (R.W. 29) says that he received Annexure V a day before the poll. In para 4 he says after reading the above he turned against Respondent No. 1 and began to work for the petitioner. This is apparently false and absurd.

Jamuna Prasad (R.W. 32) says that at 10 A.M. petitioner distributed in his village 3 pamphlets like Annexures V, VI, and VII and said—

"Achhai aur burai jo kuchh hai yeh parh kar sun lijiye aur samajh lijiye, jisko samajh pare usko vote do".

He worked for Congress till the 20th February 1962 and suddenly changed over after reading the pamphlet.

It is clear that he was tutored to state about Annexures VI and VII and while doing so, he has also included Annexure V in his statement. There is nothing in Annexure V that will make him quit the Congress.

Sheo Prasad (R.W. 30) says that at about 10 A.M. the petitioner gave him three parchas like Annexures V, VI and VII in village Lalpur and said:—

"Hamar bhalai burai aur Ram Ratan ki bhalai burai yeh ka parh ke jeka achha samjho woka vote do".

He says he also worked for Congress; but after the pamphlets were read over to him, he changed sides and decided to vote for the petitioner. He is an illiterate. He says he can only sign his name. He does not remember what were the contents of any of the parchas which were distributed and at the time of the distribution these parchas were not read over to him, but they were read over after the petitioner had left.

It is clear that the contents of Annexure V made no impression on his mind.

He further says that Annexure V was distributed in the Yagya which was performed on the 4th February 1962. It is obviously false because Annexure V could not have been published before 17th February 1962. He is a tutored witness, his evidence must be rejected.

Tripurari Jaitly (R.W. 60) says about the distribution and its result. He does not say that while distributing of Annexure V, votes were sought on grounds of caste. He has been a political Secretary of Respondent No. 1 for the last 12 years. He is highly interested in supporting Respondent No. 1's case.

The evidence of the above named witnesses does not show that the distribution of Annexure V was made with a view to bolster petitioner's candidature, on the ground of caste or appeal to caste and communal sentiments of the Brahmin community.

226. The question for consideration is whether Annexure V itself and its issue will bring it within the mischief of section 123(3) of the Representation of People Act.

It was contended on behalf of Respondent No. 1 that the petitioner for the first time in the pamphlet Annexure V added the prefix "Pandit" to his name to emphasise the fact that he was a high class Brahmin coming from a religious minded Brahmin family in order to appeal to caste and communal sentiments of that community.

In this connection reference was made to paras 170 and 171 of his cross-examination.

In para 172 he has made it clear that the answer in Annexure V to the question whether he was a Brahmin was given in great detail so that there should remain no doubt on the subject; and any one who still doubted could check all or any of the facts mentioned in the answer. It was therefore also mentioned in the answer that the Pujariship of a temple mentioned there has been in his family for generation. It was not with the intention of advertising that he came from a high class Brahmin priest family. The same answer applied to the mention of the fact that on his wife's side, there was relationship with the famous Rani of Jhansi.

In my opinion, the petitioner has given a satisfactory explanation why the details of his family background had to be mentioned in Annexure V.

The contents of Annexure V itself and its issue will not bring it within the mischief of section 123(3) of the Representation of People Act.

It has been held in *Bhim Rao Vs. Ankush Rao*—22 E.L.R. 385 as follows:—

"From the mere fact that an appeal brings out the fact that a person belongs to a particular community to the notice of the public, it cannot be inferred that votes were being solicited on communal grounds."

The opinion of their Lordships at p. 393 is given below:—

"In our opinion it is difficult to characterise this news item as communal propaganda on behalf of the respondent. No doubt the respondent is a Maratha, and this fact has been brought out in the news item. But it cannot be said that by publishing this fact any appeal was being made to the electors to vote for the respondent on the ground that he is a Maratha. Apparently, the object of publishing the

news item was to contradict false propaganda alleged to have been secretly carried on by the Congress workers against the respondent. It may be that as a result of the publication the voters would come to know of the precise community to which he belongs, but by merely bringing the fact to the notice of the public it would not be proper to infer that their votes were being solicited on communal grounds. We are, therefore, unable to accept the argument advanced before us by Mr. Chandrachud."

Same view was held in 1964 M.P. 62 at p. 69 para 29.

I, therefore, hold that the pamphlet Annexure V issued by the petitioner does not come within the mischief of section 123(3) of the Representation of People Act.

227. *Issues Nos. 24 and 25.*—Respondent No. 1 in paragraph 20 of the Recriminatory Petition has alleged that the petitioner and Raja Raghvendra Pratap Singh and, with his consent, the workers and supporters of the petitioner organised a "Yagya" on the 4th of February 1962 at Sarvan Pakar Mela, where annually a fair is held on Magh Amavasya. It is further alleged that the petitioner in 'Pitambar' dress and Raja Raghvendra Pratap Singh performed religious rites connected with the 'Yagya' on the above date there. The "Yagya" was followed by a meeting in which an appeal was made on the ground of Hindu religion. This they did in order to impress upon the general public and the electorate of the constituency who had collected there that the petitioner and Raja Raghvendra Pratap Singh were spiritually and religiously to be regarded as chaste and pious Hindus and further to impress upon the electorate that Ram Ratan Gupta, opposing the petitioner, was not so and that the electorate would be acting against the divine precepts in supporting and giving the votes to Ram Ratan Gupta.

It is further alleged that the petitioner emphasised before the gathering that Ram Ratan Gupta was a heterodox Hindu in character and conduct and in his habits of eating and dining with Muslims; that he eats eggs, chicken and Murgas and fish and all kinds of flesh and was thoroughly impious and ineligible to be called a Hindu Baniya and that the general Hindu public and the electorate would be acting against the precepts of Hindu religion if they votes for Ram Ratan Gupta.

It is further alleged that the statements about the personal character of Ram Ratan Gupta were false to their knowledge and which they had no reason to believe to be true and as such they committed corrupt practice as mentioned in sections 123(2) and 123(4) of the Representation of People Act.

228. The above allegations were denied by the petitioner.

The petitioner stated that Raja Raghvendra Pratap Singh used to visit the place "Sarvan Pakar" every year on the day of the Mela and his visit on 4th February 1962 was in accordance with his custom. The petitioner accompanied him as he was near the place and an election meeting was to be held there at 1 P.M. The petitioner and Raja Raghvendra Pratap Singh visited the place together at about 1 P.M. at that time, Yagya was already over. The petitioner denied that he or Raja Raghvendra Pratap Singh performed the "Yagya" at Sarvan Pakar Mela. This "Yagya" was performed by the villagers for propitiating the Gods in connection with "Ashtagrahi". The allegations that the petitioner or Raja Raghvendra Pratap Singh in their speeches made references against Respondent No. 1's character or that they made an appeal on ground of religion or caste are denied by the petitioner.

229. Respondent No. 1 has examined Ram Kumar (R.W. 38), Kamta Prasad (R.W. 39), Dayal (R.W. 40), Ram Dularey (R.W. 41), Lal Bahadur (R.W. 47) and Tripurari Jaitly (R.W. 60).

Ram Kumar (R.W. 38) says that he attended Sarvan Pakar Mela, where he saw a platform for 'Havan Kund'. He also saw the petitioner dressed in yellow garments performing the "Yagya". He was assisted by other Pandits.

Kamta Prasad (R.W. 39), Dayal (R.W. 40) and Lal Bahadur (R.W. 47) says that they had visited the Sarvan Pakar Mela and had seen the petitioner performing the "Yagya" in yellow garments.

Ram Kumar (R.W. 38) in his cross-examination admits that there was "Ashtagrahi" in 1962 and many "Yagyas" were performed at many places on account of the "ASHTAGRAHI". A Yagya was performed and arranged by the

people of his village also. He also admits that at the time of the performance of the Yagya at Sarvan Pakar Mela, the "Ashtagrahi" was continuing. Although it is alleged in the Recriminatory Petition that both the petitioner and Raja Raghvendra Pratap Singh performed the Yagya, none of the above witnesses say that the Yagya was performed also by Raja Raghvendra Pratap Singh. It is obvious that these witnesses had been tutored to say that the Yagya was performed by the petitioner wearing yellow garments.

Ram Kumar (R.W. 38) was a worker for Devendra Nath Misra, a congress candidate. Kamta Prasad (R.W. 39) is a congress man. Dayal (R.W. 40) says that he had voted for congress. Lal Bahadur (R.W. 47) was a worker of Devendra Nath Misra in the election (*vide* para 8 of the deposition of Satya Narain Pandey P.W. 17).

Tripurari Jaitly (R.W. 60) alleges to have seen the petitioner performing the Yagya with four or five Pandits. He is Respondent No. 1's political Secretary.

All the witnesses admit that Yagyas were performed at various places to propitiate the evil effects of "Ashtagrahi".

Dayal (R.W. 40) could not name any of the Pandits of the Yagya except the petitioner and could not name any other person present in the petitioner's meeting except Ram Kumar (R.W. 38) and Kamta Prasad (R.W. 39), who gave evidence before the Tribunal on the same date.

Kamta Prasad (R.W. 39) admits in his cross-examination that he had never seen the petitioner before he saw him at the Mela for the first time. The people assembled there told him that the person wearing yellow robes was Dandekar. He could not remember the name of the person who said so.

Lal Bahadur (R.W. 47) was asked to describe the petitioner. In para 7 of his cross-examination, he gave a non-committal reply and added that the petitioner was bald. It is obvious that he did not see the petitioner at the time of the Yagya.

Ram Dularey (R.W. 41) speaks about the purchase of 'Havan' samagri at Gonda from the shop of Hanuman Prasad Pansari along with one of the petitioner's men.

He poses to be a worker of petitioner and now he has come to depose in favour of the rival candidate.

Ram Saran (R.W. 57) says that this witness was present in the congress camp on the day of poll. This witness also speaks of the presence of Nankau Chaprasi. In fact, there was no such person in the employment of the petitioner.

Ram Dularey (R.W. 41) is a veritable liar. Hanuman Prasad Pansari from whose shop the 'Havan Samagri' is alleged to have been purchased has not been examined by Respondent No. 1 to corroborate Ram Dularey (R.W. 41). All of them are partisan witnesses, no reliance can be placed on their testimony.

Petitioner (P.W. 1) has deposed in para 112 that he did not perform the Yagya. He reached the Sarvan Pakar Mela at 1 P.M. and addressed the meeting.

230. Much stress has been laid by the learned Advocate General during his argument on Ex. P. 10 written by the petitioner. Respondent No. 1's counsel referred to it to support the contention that the "Yagya" was performed by the petitioner.

Ex. P.10 only establishes the following facts:—

- (1) That the petitioner had arranged a Yagya to be performed followed by a meeting. The letter nowhere mentions that the petitioner himself or Raja Sahib Mankapur were personally to perform the Yagya. The words "to be performed" cannot be interpreted to mean that the Yagya would be performed by the petitioner or Raja Sahib Mankapur.
- (2) The petitioner apprehended serious trouble in the shape of counter demonstration on the occasion which may lead to breach of peace. In fact, the petitioner had been warned of such a happening unless he agreed to drop the function altogether.
- (3) In the above circumstances, the petitioner and Raja Sahib Mankapur could not contemplate abandoning the function, as such a step would have a serious consequence on his election prospects.

The above paragraph could not mean that the absence of the petitioner or the Raja of Mankapur would lead to the abandonment of the performance of Yagya.

Ex. P.10 has been fully explained by petitioner (P.W. 1) in para 112 of his deposition and also in paragraphs 174, 175, 176 and 177.

The statement of the petitioner is corroborated by V. B. Bhadkamkar (P.W. 2) in paras. 285, 286 and in paras 310, 311, 312, 313 and 316. The only person who could have rebutted the above evidence was C. M. Nigam, but he has not been produced by Respondent No. 1.

It was also argued on behalf of Respondent No. 1 that Ex. R.218 shows that Yagya was actually performed by the petitioner. This argument cannot be accepted as Ex. R.218 does not mention the performance of the Yagya or the presence of the petitioner or Raja Sahib Mankapur at the Yagya.

Respondent No. 1 has failed to adduce cogent evidence to show that the "Yagya" at Sarvan Pakar Mela was performed by the petitioner or Raja Raghvendra Pratap Singh.

231. Next point for consideration is whether the petitioner addressed the public meeting at the Mela appealing on ground of Hindu religion to vote for him and not to vote for Ram Ratan Gupta, as he was not a religious man.

The above allegations, I have already considered and decided in issue No. 23. It only remains to be seen whether in the meeting addressed by the petitioner, any reference to the personal character of Respondent No. 1 was made as alleged in para 21 of the Recriminatory Petition.

Ram Kumar (R.W. 38) mentions about the speech which was made by Shastriji. The evidence regarding Shastriji's speech is to be ruled out, as there is no allegation about it in paras 20 and 21 of the Recriminatory Petition.

Petitioner's speech as given out by Ram Kumar (R.W. 38) is different from what is mentioned in para 21 of the Recriminatory Petition.

Kamta Prasad (R.W. 39) does not say what was the speech, but he merely gives his impression.

According to Dayal (R.W. 40), the speech given by the petitioner was as follows:—

"Vote Ram Ratan Gupta ko nahin dena hai woh mazdooron ka khoon choosta hai sharab pine wala hai woh Baniya hai ham Brahman hain."

The alleged speech is quite different from the allegations in paras 20 and 21 of the Recriminatory Petition.

Lal Bahadur (R.W. 47) gives quite a different version of the speech made by petitioner in the meeting. According to him, the petitioner said as follows:—

"Ham Brahman admi hain aur dharam karte hain Jo samjha jaye to kiya jaye Purnyatna admi hain Isliye hamre ka vote do Dharam rahi to sab kuchh hai aur Dharam na rahi to kuchh nahin hai."

According to Tripurari Jaitly (R.W. 60), the petitioner addressed the meeting in the following words:—

"Main aap hi ke gotra ka bashisht brahman hoon aur yeh jan kar ki Babhani Piar men aap sab Brahman bhi mere hi gotra ke hain yahan se khare hone ka sahas kiya aur agar aap sab chahte hain ki yek mans madira khane wale maliksh baniye ke mukable men ek karm kandi Brahman ki jeet ho to aap mujhe vote den. Is se Brahman dharam ki raksha hogi."

He has evidently surpassed the other witnesses in quoting the words alleged to have been uttered by the petitioner in the meeting. This witness is an active worker of the congress and at present he is a member of the City Congress Committee and has also courted imprisonment during the Congress movement in 1942.

In his enthusiasm he over shot the mark.

It is clear that the above witnesses have given different versions of the speech made by the petitioner while addressing the meeting at Sarvan Pakar Mela. They have failed to prove the true import of the speech given by the petitioner.

I find that Respondent No. 1 has failed to substantiate the allegations in paras 19, 20 and 21 of the Recriminatory Petition.

232. The next question for consideration is whether "Yagya" is a symbol or is a mere rite.

It was argued on behalf of Respondent No. 1 that a Yagya is a religious symbol and the performance thereof would amount to use of an appeal to the religious symbol for furtherance of the candidate's prospects at the election.

I am unable to accept the Respondent No. 1's contention that Yagya is a symbol.

It has been held in *Karan Singh Vs. Jamuna Singh*—15 E.L.R. 370 as follows:—

"The use of the expression, "such as" instead of "including" or "for example", in section 123(3) connotes an idea that only those national symbols should be taken into account which are alike and similar to the national flag or the national emblem. In order to be like or similar to the national flag or the national emblem, a national symbol must possess the same characteristics which are possessed by the national flag or a national emblem and, therefore, must become a national symbol by a process similar to that by which the national flag became a national symbol".

The point has been discussed at length in pages 374 to 377.

To suggest that performance of "Yagya" amounts to a religious symbol contemplated in Section 123(3) of the Representation of People Act is to engage in unconvincing sophistry.

233. *Issue No. 26.*—Respondent No. 1 in para 22 of the Recriminatory Petition has alleged that leaflets like Annexure VI were published by Abdul Rahim Khan *alias* Buddhoo Khan who was an agent of the petitioner and distributed by him; that the allegations in the above Annexure were against the personal character and conduct of Respondent No. 1 which were false to the knowledge of the petitioner and Buddhoo Khan and they did not and could not believe it to be true. The person who distributed the said leaflets did so with the consent of the petitioner.

The petitioner in para 22 of his written statement that Abdul Rahim Khan worked as a counting agent for him at the time of recounting, but denied that he printed and published the leaflets with his knowledge and consent. He also denied that the said leaflets were distributed at any time in the constituency with his knowledge or consent.

Respondent No. 1 examined Sheo Prasad (R.W. 30), Jamuna Prasad (R.W. 32), Nankau (R.W. 33), Sheo Lagan (R.W. 35), Narain (R.W. 55) and Tripurari Jaitly (R.W. 60) regarding the distribution of the leaflets.

Sheo Prasad (R.W. 30) says that the petitioner gave three *parchas* like Annexures V, VI, and VII at village Lalpur.

Jamuna Prasad (R.W. 32) says that at about 10 A.M. Buddhoo Khan, Ragho Ram Pandey and the petitioner went to his village Gaurawa Kanungo and distributed leaflets like Annexures V, VI and VII.

Sheo Lagan (R.W. 35) says that he was given a bundle of papers containing 3 *parchas*. Out of those two were like Annexures VI and VII. He was asked to distribute these *parchas* in different villages and also to get them pasted at various places.

Narain (R.W. 55) and Tripurari Jaitly (R.W. 60) both say that leaflets like Annexure VI were distributed by the petitioner at Malari and Babni Piar respectively.

Tripurari Jaitly (R.W. 60) does not say who distributed these leaflets.

Evidence of Sheo Prasad (R.W. 30) and Jamuna Prasad (R.W. 32) has been considered in connection with issue No. 23 and they were found unreliable.

(R.W. 33) who appeared as a witness is an imposter. His entire evidence has been rejected.

Sheo Lagan (R.W. 35) posed to be a worker of the petitioner but now has come to give evidence in favour of the rival candidate.

In his cross-examination he says that he was engaged by Tribhuan Dutt, a sipahi of the petitioner on Rs. 5 per day. He has also admitted that in his village

there was no one to do the canvassing on behalf of the petitioner nor on behalf of Hem Raj Gir, but there was canvassing for congress, which was done by Prem Sagar and others. It is difficult to believe that Tribhuan Dutt would go to the village of this witness for his enrolment as petitioner's worker when there was no canvassing for the Swatantra party in his village.

Narain (R.W. 55) in his cross-examination says that Ishwar Saran was a congress candidate for the Assembly. Last time he came two or three days before the date of poll. When Ishwar Saran came last time after the visit of the petitioner, the witness did not show the parcha (Annexure VI) to Ishwar Saran, neither did he tell him about the allegations that were made against the congress candidate.

In the face of the above admissions, it is difficult to believe this witness that leaflets like Annexure VI were distributed by the petitioner in his village. Had there been really such a distribution, as stated by him, he would have certainly shown the pamphlet to Ishwar Saran.

I disbelieve his evidence.

Petitioner (P.W. 1) in para 122 has stated that Abdul Rahim Khan was at no time his agent or worker, but in his list of counting agents for the first counting of Mahadeva, his name was suggested and included. Subsequently, before the first counting his nomination as his counting agent was revoked.

In his written statement, which he filed in reply to the Recrimination Petition, he says he inadvertently stated that Abdul Rahim Khan was his counting agent at the recounting. This is also a mistake. He says he was not his counting agent at the recounting. The revocation of Abdul Rahim Khan as his counting agent at the first counting was in writing. The revocation of Abdul Rahim Khan has not been controverted any further.

There is no reliable evidence to show that he acted as an agent of the petitioner in distributing the leaflets Annexure VI.

234. The following is the translation in English of Annexure VI. The dialogue in this leaflet is not directed against the personal character or conduct of Respondent No. 1.

"Ramai.—Yes, Gupta has become a SETH by usurping such money here and there. He runs several mills, is Mayor of Kanpur and is throwing money like water in order to become M.P. on Congress ticket.

Santoo.—Addressing as Bachcha said: It is the youth of KALYUG. Are you not aware that Chandrabhan Gupta lost two elections and then became Chief Minister at Lucknow—Money has power to wipe off faces of evils.

Rahiman.—I am fed up, my boy does not agree with me. He asks me to vote for Gupta and to procure votes for him, as he would get service in the mill, he is a great man and feeds great persons. Babu Sampurnanand Ex-Chief Minister's brother Paripurna Nand is under his employment.

Santoo.—It is in order to feed big personalities Gupta has secured Congress Ticket otherwise this very Gupta won Municipal election against Congress but lost his seat on account of the election Petition. He in the Octroi election of 1935 made his dozens of followers to contest the election against congress, and in order to secure Chairmanship played tricks but ultimately was defeated. He in order to get the title of "KNIGHTHOOD" during the world war pleased Morris Hallot the Governor of Province and got himself enrolled as a member of Hallot Memorial Committee. He in order to secure a seat of M.P. contested the election from Sidhi constituency Madhya Pradesh against congress but lost. He recently against Jagbahadur Congress candidate made Sheo Kumar Srivastava to contest the election for Chairmanship of District Board, Kanpur and lost. In this election in the Unnao district against congress he got a friend of his employee to contest the Parliamentary election on Praja-socialist ticket. So long Shri Pant Baba was alive he could not succeed. Now every thing has changed Gupta has become a congressman, he gets hoisted tri-colour flags of mill cloth in Gonda, he even now wears mill cloth,

he spares nothing to uproot the Congress. Are you not aware that in order to get vote for himself he has manipulated to arrange to get Dr. Siraj from Intiathok contests as Swatantra candidate and Shri Nayyar from Nawabganj as Jansangh candidate. He acts as suits the occasion. He is not the same at lips what he is at heart.

Rahiman.—Brother—Prior to what I know today, in the night of 27th January I felt hatred when I heard saying, "The people of Gonda are thieves and Gundas". The Hindus and Muslims of entire Gonda have decided that vote may be thrown in the well or tank but should not be cast in his favour. The prestige of Gonda District when there had been great people like Molvi Ashraf Khan and Raja Debi Baksh Singh has to be maintained. Now in whose favour vote is to be cast, the mind and heart is unable to decide.

Ramai.—The Congress which is ruling—Look to all the things—the permits, the licences, the *shifarish* for employments. Gupta was fined Rs. 2,500 in 1959 for the breach of Foreign Exchange Regulation Act but has not paid any pice uptill now.

Santu.—Such talks are heard. We are not to vote for Congress who in order not to leave its chair made settlements with the Muslim League in Keral, Gantantra Parishad in Orissa, and not stick to its settlement of the achieving its object. We should consider about the others. Mahant Dukh Haran Nath Baba is Baba Hemraj Gir. He is the man belonging to the District but cannot read or write. At Delhi Acts are to be passed and not shells and bells are to be sounded there. Oh Mahant Digvijai Nath, you could get Baba who was defeated by Wazir Khan in the Election of the Pradhan of Gonda Gird. Third is socialist Dr. Madhuri Kanchan Sinha. What should we think of her who does not possess a proper mind. She quarrels with Jawahar Lal at Allahabad. It is just like fanning a storm. Dandekar Mahraj the fourth is left who is a Swatantra candidate. This man is very able, and social. It is heard that he is I.C.S. who was getting many thousand rupees as salary. He has resigned that job and has come out to serve us. The vote may be cast in his favour.

Ramai.—Very well tell me about the Assembly seat what do you hear in the villages and market. In whose favour it is intended to cast votes.

Santu.—Who does not know about Ishwar Babu who muddled the Congress accounts. The vouchers have been taken away by monkeys. It was not even a year passed that Mahatma Gandhi died, he looked for another door. He became socialist by using red flag. He came for the same purpose to Motiganj and Hulsipur. He is not able to account for thousands of rupees of the two schools and the society of Gonda. This is why he was ousted from the Chairmanship of the Municipal Board and has been ousted from the society recently. He contested the M.L.A. election in 1948, 1952 and 1955 and lost. He also lost the Chairman Election of the District Board. He is contesting again Election to loose it because it is clear as Ram Lal Gupta Vakil has become Election Incharge and to cut his Congress ticket. Bapuji has not been asked and as such you may understand how can the matter go alright. The second connected person is Sri Rameshwar Dutt Tewari Vaid of Retawan Hindi Mahasabha and the third is Gomti Prasad Yadav Vakil of Socialist party.

Rahiman.—With hatred. No body would like these two persons. Tell me further.

Santu.—Very well. The fourth is Dr. Chaturdhan Chowdhry Jansangh. This is the rival party of congress. In the trouble of congress Babu Sampurnanand called for help in 1957, Ram Abhilakh and Dharampal Singh who were elected M.L.As. from the Jansangh ticket from my district joined congress. Ishwar Saran called for help, Ram Shankar Jansangh who was elected as member of the Municipal Board from Bankatwa joined congress. Ram Ratan Gupta called for help. Raja of Dhanepur Jansangh who was contesting M.P. election, his heart-trouble increased who withdrew himself. At the residence the yellow flag was replaced by the tri-colour one. You can see it.

Moreover Dr. Chowdhry is the Grand-son of Baldan Chowdhry to whom it is heard that he considered it below his dignity to participate in others functions. He used to send his sandals.

Ramai.—Much has been heard about them I do not wish to hear more. Is there any other candidate? Why have you forgotten Raghav Ram Pandey?

Santu.—Yes, Pandeji is left out. He is contesting election as Swatantra Party candidate. He remains for the whole day and night out of his house to serve us. It is not known at what time he takes his food and sleeps. This is why in 1957 when his Pattidar Raja Dhanepur with red cap on contested M.L.A. election to get his votes distributed even then Lal Behari Tandon President Zila Congress was defeated by hundreds of votes by Janardan and got his brother elected as M.L.A.

Rahiman.—Well done Santu. You have cleared every thing. Now we should proceed to villages and make these propagandas we should take cycle and money from Gupta who has collected money after sucking the blood of labourers. This is not the Kanpur Mayor's election—Phole ghome Mausi we are not fools. For Parliament vote for N. Dandekar and for assembly mark against "Star" symbol"

Criticism of political public life of a candidate does not come within the purview of section 123(4) of the Representation of People Act.

It has been held in *Sudhir Laxman Hendre Vs. S. A. Dange and others*—17 E.L.R. 373, as follows:—

"The principal underlying section 123(4) of the Representation of the People Act is that in order to come within the ambit of the corrupt practice under section 123(4) of the Act, there must be a false statement of fact by a candidate or his agent which is made in relation to the personal character or conduct of any other candidate. Adverse criticism however severe, however undignified or ill-mannered however regrettable it might be in the interests of purity and decency of public life, in relation to the political views, position, reputation or action of a candidate, would not bring it within the mischief of the statute. The Court in such matters cannot judge these statements in the light of their decency or desirability in so far as they are political statements not calculated to attack the personal character or conduct of any rival candidate".

I, therefore, hold that the statements in the leaflets mentioned in para 22 of the Recriminatory Petition do not amount to allegations against the personal character of Respondent No. 1.

235. *Issue No. 27.*—Respondent No. 1 in para 23 of the Recriminatory Petition has alleged that between the period commencing from 6th February 1962 to 18th February 1962 special issues of Nagrik were distributed in the constituency by the petitioner and with his consent by his workers and supporters. In the special election issue of Nagrik (Annexure VII) and dated 13th February 1962 false statements regarding the personal character and conduct of Respondent No. 1 were made which he and his agents could not and did not believe to be true and that these false statements were reasonably calculated to prejudice the prospects of Respondent No. 1 in his election.

The petitioner stated that in the issue of Nagrik dated 6th February 1962 and 13th February 1962, articles appear to have been published therein relating to Respondent No. 1. He denied that he had anything to do with the printing or publishing of the articles. He denied that he or his agents or workers with his consent distributed the copies of the said papers at any time during the election in any part of the constituency. He stated that the Editor, publisher and printer of the said papers were at no time his agents or workers or supporter. The allegations of corrupt practice contemplated in section 123(4) of the Representation of People Act were denied by the petitioner.

236. Respondent No. 1 examined Swami Nath Tewari (R.W. 23), Tribhuan Dutt Sharma (R.W. 29), Sheo Prasad (R.W. 30), Jamuna Prasad (R.W. 32), (R.W. 33), Samokhan (R.W. 34), Shco Lagan (R.W. 35), Bramha Dutt (R.W. 36), Ram Dularey (R.W. 41), Kailash Nath (R.W. 45), Swarup Chandra (R.W. 49) and Tripurari Jaitly (R.W. 60).

Swami Nath Tewari (R.W. 23) has deposed that about 20 copies of the weekly paper Nagrik was distributed by him at Khargoopur Bazar which is Annexure VII on the direction of the petitioner. When questioned in cross-examination he could not remember on which date or dates he distributed the pamphlets about which he stated before, nor could he remember to whom he distributed them. He also does not remember how many days prior to the date of poll he distributed the pamphlets. He could not even say whether it was 5 days before or 10 days before or 5 months before the date of poll.

He is obviously a tutored witness. No reliance can be placed on his testimony. He poses as petitioner's worker and he has now come to give evidence in favour of the rival party. His evidence was considered while dealing issue 23 when he was disbelieved.

237. Tribhuan Dutt Sharma (R.W. 29) says that he worked for the congress till a day prior to the date of poll when he received the copy of Nagrik similar to Annexure VII. He does not say that it was given to him by the petitioner for distribution. He says that one Trilok Singh who was a Swatantra Party worker had given it to him. In his cross-examination he says he was a member of the congress for the last 45 years, but after reading the Nagrik he took a vow to work for the petitioner and to oppose Respondent No. 1. The testimony of a man who can so easily change sides is worthless. He also deposed in support of the allegations contained in Issue No. 23, he was disbelieved.

He is telling lies when he says that he was given copies of Nagrik like Annexure VII by Trilok Singh.

Sheo Prasad (R.W. 30) also says that he was a congress worker till one day prior to the date of poll, when he was given three parchas, like Annexures V, VI and VII by the petitioner in his village. In his cross-examination he admits that he is illiterate. The pamphlets were read over to him by Sheo Dayal at his house where he had gone casually to drink water. Other persons present there were Sita Ram, Tulsi Ram, Salig Ram, Kedar Pandit and some 40 or 50 other persons of Lalpur village.

None of these persons have been examined to corroborate him. He was examined on Issue No. 21, he was disbelieved. His testimony is not reliable. (See 19 E.L.R. 417).

Jamuna Prasad (R.W. 32) stated that at about 10 A.M. Buddhoo Khan, Ragho Ram Pande and the petitioner came to his village in a Jeep and distributed Pamphlets like Annexures V, VI and VII. He says that due to these pamphlets Congress was a loser of votes to a large extent as in the absence of these pamphlets they would have all voted for Congress; an absurd story which it is difficult to believe.

In his cross-examination he says that Annexure VI contained all allegation about the decree for Rs. 17,56,227/- being passed on 10th May 1960 in the Court of Judge, Bombay against Ram Ratan Gupta. He says this was false. This was brought to his knowledge by some Congress men viz. Ram Samujh Misra and Bechoo Babu at Gonda.

The above statement made by him is false as there has been a decree against Respondent No. 1 to the tune of Rs. 17 Lakhs and above. His evidence on Issue 23 was disbelieved.

Ram Samujh Misra nor Bechoo Babu have been examined by Respondent No. 1. The entire evidence of this witness is a tissue of lies and not worthy of any credence.

The evidence of R.W. 33 who posed as Nankau need not be considered at all. There was no one by name Nankau in the employment of the petitioner. One Shyamadhar was tutored and examined as Nankau as Respondent No. 1's witness.

238. Samokhan (R.W. 34) is a resident of village Kochawa in Gonda West Assembly constituency. He says that a day before the poll, at about 4 P.M., the petitioner visited his village. He got down from his car and after ascertaining for whom they were going to vote, he gave them issues of Nagrik similar to Annexure VII and asked them to decide after reading the same.

It is highly improbable that the petitioner, a day before the poll, would engage himself in distributing the pamphlets. When asked in his cross-examination, he could not say whether the Nagrik Annexure VII is identically the same as the parchas that were distributed. He could not say what were the dates of

the Nagrik issues, neither he could give the names of the persons who accompanied the petitioner when he went to his village. At the time of the distribution he did not make any enquiry whether the allegations against Ram Ratan Gupta were correct and without making any such enquiry they turned against him. He is unreliable, he has been apparently telling lies.

Sheo Lagan (R. W. 35) says he was asked to get a cycle on hire for distributing parchas contained in a bundle. These parchas were like Annexures VI and VII. His evidence on issue No. 26 regarding the distribution of pamphlet Annexure VI was considered and he has been disbelieved. He poses to be a petitioner's worker and has now appeared as a witness for the rival party. No reliance can be placed on his testimony. (See 19 E.L.R. 417).

Bramha Dutt (R. W. 36) is a resident of village Bhairampur in Gonda West Assembly constituency. He says that a day before the poll at about 4 P.M., the petitioner visited his village and distributed three parchas. He does not identify the parchas that were alleged to have been distributed by the petitioner.

No reliance can be placed on his uncorroborated testimony.

Ram Dularey (R. W. 41)'s evidence was considered in respect of Issue No. 24. He was disbelieved. He has deposed that on 8th February, 1962 he was asked by the petitioner to distribute copies of Nagrik issue in Gonda North Constituency. He also produced Nagrik dated 13th February, 1962 when he was in the witness box. He says that he also distributed this issue of Nagrik and told the persons regarding the speech made by Pt. Jawahar Lal Nehru to those who could not read. He posed as a petitioner's worker and now he has come forward to give evidence for the rival party. (See 19 E.L.R. 417).

He is, in fact, a Congress worker. He was seen in the Congress camp at Khargoopur polling station by Ram Saran (R. W. 57) on the day of poll.

It was contended on behalf of Respondent No. 1 that Dularey who was mentioned by Ram Saran (R. W. 57) was a different person. It was said that Ram Dularey (R. W. 41) was an accused in a complaint made against the Swatantra party workers and in that complaint, the name of Ram Dularey's father was mentioned as Prabhat. To support the above contention, Respondent No. 1's election agent filed a copy of the report with an application and affidavit. On careful examination of this copy, I find that the name of Ram Dularey's father has been mentioned "Agvat" meaning "not known". It is clear that Ram Dularey (R. W. 41) was not the person named in the complaint.

He has been telling lies when he says that he worked for the petitioner and distributed the issues of Nagrik at his instance.

His evidence on Issue 24 was disbelieved. (See 19 E.L.R. 417).

239. Kailash Nath (R. W. 46) is a resident of Khargoopur which is in Gonda North constituency. He says that after the speech of the Prime Minister, 10 to 12 days before the poll, copies of parchas were distributed on 10th February, 1962 which were similar to Annexure VII and those distributed on 18th February, 1962 were similar to Nagrik dated 13th February, 1962 (Ex. P. 219A). He says that he worked for the Congress party in the election and when parchas like Annexure VII were distributed, he had sufficient opportunity to impress upon the public that the allegations contained in the parcha were wrong. He admits that he could have easily washed away the bad effects which were created in the minds of the public by the distribution of these parchas (he evidently means Nagrik dated 6th February, 1962).

He further says that when the copies of Nagrik dated 13th February, 1962 were distributed, he had no time to let the public know that the facts contained in those copies were false.

From the nature of his replies to questions put to him in his cross-examination it is abundantly clear that he is a Respondent No. 1's man. He has given evasive answers throughout to the questions put to him with regard to the allegations made in Nagrik Annexure VII (See paras 5 to 13 of his deposition).

No reliance can be placed on his statements.

240. Swarup Chandra (R. W. 49) says that at about 3 P.M. one day before the date of poll, he met Ram Dularey of Khargoopur who handed over 10 copies of Nagrik issue dated 13th February, 1962 to him for distribution. He says he distributed them in his village Kamrawa. The testimony of Ram Dularey

(R. W. 41) has been disbelieved. He does not say that he gave any issue of the Nagrik dated 13th February, 1962 to R.W. 49 for distribution.

Swarup Chand (R. W. 49) is evidently telling lies that he distributed the issue of Nagrik given to him by Ram Dularey. In fact Ram Dularey could not have distributed any of the copies of Nagrik as he was a Congress worker.

I find that Respondent No. 1 has failed to show that the copies of Nagrik dated 6th February, 1962 and 13th February, 1962 were distributed by the petitioner or with his consent by his workers at the time of the election.

241. The Nagrik dated 6th February, 1962 (Annexure VI) mentions that they were printed in Kanpur and published by P. C. Kapoor. The name of the Editor is given as Kamal Gupta.

There is no evidence on record to show that the petitioner was the author of the contents in these news-papers, neither there is anything to show that they were written with the knowledge and consent of the petitioner or that the editor was acting as the agent of the petitioner in connection with his election and that too with his consent.

The entire evidence of R. W. 33 has been rejected for the reasons already given.

In *Nani Gopal Swami Vs. Abdul Hamid Choudhury and another*—19 E.L.R. 175, it has been held as follows:—

“If an offending article appears in a paper, which is proved to have circulation and is read by the public, this would be sufficient publication in the eye of law to constitute corrupt practice within the meaning of the Act, provided it is also found that the said publication was at the instance, or with the consent, of the candidate or his Election Agent. The real point of the decision in *Maulana Abdul Jalil Choudhury Vs. Rathindra Nath Sen* (13 E.L.R. 290) was that the publication must be proved to be with the consent of the candidate.

In order to fasten the liability of the editor's act on a candidate, it is necessary to establish that the editor was acting as an agent of the candidate in connection with the election and that too, with his consent. Mere action of the editor beneficial to the candidate would not be enough to prove that he was acting as an agent in connection with the candidate's election; further it should also be proved that he was doing the alleged act with the consent of the candidate”.

242. In the Nagrik of 6th February 1962 (Annexure VII) there is a caption “*Ram Ratan Gupta ki har Congress aur uske siddhanton ki jeet hogi*”.

Under this caption there are detailed references to several items relating to the nomination of Respondent No. 1, his political career as well as anti-social acts, as given below:—

- (1) Ticket kaise mila.
- (2) Congress birodhi Lala Ji.
- (3) Congress ke janm jat birodhi.
- (4) Ek Mahatvpurn udaharan.
- (5) Gupta Ji ki Jiwni; Congress birodh ki kahani.
- (6) Shuroo se hi dwand phand.
- (7) Paden sadasyata ka rahasya.
- (8) Desh drohita ka praman.
- (9) Bahuroopiya.
- (10) Ausarwadi Gupta Ji.
- (11) Samaj birodhi karya.
- (12) Congress ke jali member.
- (13) Kanpur Mahapalika bhi kalankit.
- (14) Chunao ki chalbazian.
- (15) Khuli ausarwadita.

Out of the above items, only item No. 11 refers to his anti-social activities namely black-marketing and evasion of payment of Income-Tax.

In the Nagrik dated 13th February, 1962 (Ex. R. 219A) there is an article under the caption “*Lala Ram Ratan Gupta par lakhon ka sarkari qarza*”.

It contains the following items which refer to Respondent No. 1's personal character:—

- (1) Mill Malik kaise bane.
- (2) Larai ki Kamal.
- (3) Lala ji ke Bank ka diwala.
- (4) Bima Company ki digree.
- (5) Sampati kurk: Giriftari ki darkhwast.
- (6) 65 lakh ka Qarza.
- (7) Congressi netaon ki kripa.

243. Nagrik dated 6th February, 1962 begins with the caption "GONDA KE SACHHE AUR IMANDAR CONGRESS-JANO KA KARTAVYA" RAM RATAN GUPTA KI HAR CONGRESS AUR USKE SIDDHANTON KI JEET HOGI". The publication in Hindi under item 11 in relation to the personal character of Respondent No. 1 is to the following effect:—

He concealed his income to avoid Income-tax. Government got clue about it but could not catch him.

He was involved in profiteering and black-marketing.

Special police raided his office and residence and seized account books and certain documents.

Late Govind Ballabh Pant, who was then Chief Minister of Uttar Pradesh, did not like the activities of Respondent No. 1 and he could not get congress ticket in his life time.

Case of Respondent No. 1 was enquired by special Income-tax commission, who found him guilty of tax evasion of a large amount of Income-tax and he was directed to pay the same which he has not done.

As soon as Dr. Sampurna Nand became the Chief Minister of Uttar Pradesh, Respondent No. 1 appointed Dr. Sampurna Nand's younger brother as his private Secretary.

Later on, after the defeat of Dr. Sampurna Nand, when Sri Chandra Bhan Gupta stepped in, Respondent No. 1 joined hands with him.

244. Nagrik, dated 13th February 1962 (Ex. R. 219A) begins with the caption "EK CONGRESSI UDDHOGPATI KI VASTAVIK KAHANI". In this Nagrik, dated 13th February 1962 (Ex. R. 219A) the publication in Hindi in relation to the personal character and conduct of Respondent No. 1 is to the following effect:—

He purchased Laxmi Ratan Cotton Mills, started by L. Kamlapati in Kanpur in which Respondent No. 1 was taken as a partner. After the demise of Kamlapati, a dispute arose between his sons and Respondent No. 1 in the result Respondent No. 1 became the sole proprietor of the said Mill.

In order to expand his business, Respondent No. 1 purchased Empire Life Insurance Company and Discount Bank of Bombay, of which he became Chairman of the Board of Directors. He utilised the money of the Empire Life Insurance Co. for his personal projects and projects of his friends and relations. He transferred large amount of money of the Empire Insurance Co. to his Discount Bank between the years 1946 and 1950. On the objection by Government of India, Respondent No. 1 executed an agreement that in case the Discount Bank goes into liquidation, he will be personally liable for the amount of the Empire Life Insurance Co. Subsequently, the Discount Bank went into liquidation, at that time it had Rupees fifteen lacs five thousand two hundred seventy-seven of the Empire Insurance Company in deposit with it. In 1959 Insurance Company sued Respondent No. 1 for this amount in the High Court of Bombay. Respondent No. 1 denied his liability in spite of the agreement. Meanwhile Life Insurance Corporation took over the Insurance Co. and obtained a decree to the tune of Rs. 17,56,277/- against Respondent No. 1. This decree is being executed in the court of the District Judge, Kanpur and properties of Respondent No. 1 had been attached in execution thereof.

Respondent No. 1 having failed in his attempt to quickly amass large fortune found himself in financial difficulties. He returned to this State when B. Sampurna

Nand was the Chief Minister of Uttar Pradesh and C. B. Gupta was the Minister for Industry.

In 1956, the Government of Uttar Pradesh advanced a loan of Rs. 50 lakhs to Respondent No. 1 for his Engineering firm, namely Laxmi Ratan Engineering Works. At that time the entire assets of this Company were only of the value of Rs. 12,37,320/- and one of the Directors of this Company was B. Sampurna Nand's younger brother Sri Paripurna Nand Verma.

Five years have elapsed for the above loan, but it has not been repaid. It was to be repaid by instalments from 1958, but not only the instalments are in arrears but the interest on the loan also has not been paid. In the result, Respondent No. 1 is indebted to the Government of Uttar Pradesh to the tune of Rs. 65 lakhs.

Respondent No. 1 has been fined Rs. 2,500/- for contravening Foreign Exchange Rules.

245. Respondent No. 1 has not gone in the witness box to state about the falsity of the allegations against his conduct or character appearing in the two issues of Nagrik. It was contended on behalf of Respondent No. 1 that publication relating to Respondent No. 1 was false and burden of proof to show that it was not false was on the petitioner.

Reliance was placed on 22 E.L.R. 385, in which it was laid down that where the allegation concerns the character of a person, the ordinary presumption of law that a person must be presumed to be innocent will apply and the burden would be upon the person who has made defamatory allegations against the character of another to prove that they are true.

I am unable to follow the above ruling as there are preponderance of decisions holding the opposite view namely in such cases the burden lies on the person who contends that the statement of facts relating to his personal character or conduct is false.

In *Biswanath Upadhyaya Vs. Haralal Das and others*—16 E.L.R. 405, it has been held as follows:—

"The burden of proving that the statements contained in an article are false lies on the petitioner. Where the petition is based on the ground that false allegations have been made in relation to the conduct of the petitioner as a candidate which amount to corrupt practice, the petitioner should deny on oath the truth of the allegations made against him and his failure to do so may give rise to a presumption against him".

In *Sardar Gurbaksh Singh Vs. Gurdial Singh and another*—A.I.R. 1927 P.C. 230, it has been held as follows:—

"The practice of not calling the party as witness with a view to force the other party to call him, and so suffer the discomfiture of having him treated as his, (the other party's) own witness is a bad and degrading practice. 32 All. 104 (P.C.) Ref. The true object to be achieved Court of Justice can only be furthered with propriety by the testimony of the party who personally knowing the whole circumstances of the case can dispel the suspicions attaching to it. The story can then be subjected in all its particulars to cross-examination".

See also A.I.R. 1954 Patna 280—

A.I.R. 1957 Allahabad 346.

In *Karnal Distillery Co. Ltd. and others Vs. Ladli Parshad Jaiswal and another*—A.I.R. 1958 Punjab 190, it has been held as follows:—

"It is the bounden duty of a party personally knowing the facts and circumstances of the case, to give evidence, and to submit to cross-examination. Courts have rightly drawn a presumption against the party avoiding the witness box, and not submitting himself to cross-examination. The party who does not enter the witness-box runs a great risk of a presumption being drawn against him".

246. Respondent No. 1's witness Tripurari Jaitly (R.W. 60) was his political Secretary for 12 years till the end of 1961.

In para 18 of his cross-examination he admits that there is a decree for over Rs. 17 lakhs in favour of Life Insurance Corporation against Ram Ratan Gupta. He adds that an appeal had been filed against the above decree, but he does not know whether the appeal has been dismissed by the Bombay High Court. He denies knowledge as to the fact which led to the passing of the above decree against Ram Ratan Gupta.

He admits that a fine was imposed on Ram Ratan Gupta for breach of Foreign Exchange Rules in 1959-60. He adds that an appeal is pending against the order in the Supreme Court. He admits in para 23 of his deposition that during the World War II, amongst the business of Ram Ratan Gupta, there were Lakshmi Ratan Cotton Mill, Termol Welding, but he is not aware of any other business. He admits that in Lakshmi Ratan Cotton Mill, Sir Padampat Singhania also had shares. The relations between Ram Ratan Gupta and the family of Sir Padampat Singhania became strained after World War II. There was an arbitration and as a result of that the whole of Lakshmi Ratan Cotton Mill went to the share of Ram Ratan Gupta, sometime in 1947.

He also admits in para 16 of his deposition that Ram Ratan Gupta was the shareholder of Empire of India but denies knowledge whether he had controlling share in that Company. He also admits that Ram Ratan Gupta was a shareholder of the Discount Bank, but does not know whether he had a controlling share in that Bank. He admits that the Discount Bank has gone into liquidation and that a large amount of money of the Empire of India was deposited in the Discount Bank Ltd., but, subsequently, he adds that Ram Ratan Gupta when he held shares in those Companies, he was the Chairman of the Board of Directors of the said two Companies, in or about 1950-51, but denies knowledge whether Government of India raised objection to the deposits of the Empire of India into the Discount Bank Ltd.

He admits that Rs. 50 lakhs were given as loan by the U.P. Government to the Lakshmi Ratan Engineering Works Ltd. in the year 1957-58, but he does not know whether the above loan was to be repaid by instalments.

When questioned, he denied knowledge how much money was paid in the books of Ram Ratan Gupta towards Employees State Insurance and Provident Fund account.

It is clear from the admissions of Tripurari Jaitly (R.W. 60) that some of the facts regarding financial dealings of Ram Ratan Gupta published in the two Nagrik are true. In respect of the other publication, Tripurari Jaitly (R.W. 60) had either denied knowledge or gave evasive reply.

Rama Nath Misra (R.W. 1) who is election agent of Respondent No. 1 admits that Sri Paripurna Nand Verma lives in Kanpur and says "I think he is a Director in Lakshmi Ratan Engineering Works, in which Respondent No. 1 is a shareholder.

Under the circumstances, it was incumbent on Respondent No. 1 to enter the witness box to give evidence about the falsity of the allegations appearing in the two issues of the Nagrik. He took no action against the publisher and printer of this weekly paper.

247. Petitioner on the other hand has filed documents which go to prove the truth of many of the above allegations referred to in paragraphs 243 and 244 of the judgment.

(i) Ex. P. 127 is a judgment of High Court of Judicature Bombay, dated 7th March, 1960.

(ii) Ex. P. 128 is the copy of the decree for the sum of Rs. 17,56,227.94 nP. against Respondent No. 1.

The judgment of the High Court, Bombay shows that the suit was brought against Respondent No. 1 by Life Insurance Corporation to enforce indemnity bond executed on 9th March 1949 in favour of the Empire of India Life Assurance Co., wherein Respondent No. 1 undertook the obligation to pay to the company various sums of money deposited by the Company from time to time in the Discount Bank of India Ltd. in the current or Fixed Deposits accounts and which were outstanding at the date of the indemnity bond not exceeding the sum of Rs. 18,91,931/-.

Respondent No. 1 raised various contentions which were negatived and a decree for a sum of Rs. 17,56,227.94 nP. mentioned in Ex. P. 128 was passed against him.

- (iii) Ex. P. 130, P. 131, P. 132 and P. 133 relate to the execution proceedings against Respondent No. 1 for recovery of the decretal amount passed in favour of the Life Insurance Corporation.
- (iv) Ex. P. 126 is the copy of paragraph 153(b) (i) of the Audit report 1963 regarding delay in recovery of loan from M/s. Lakshmi Ratan Engineering Works Ltd., Bombay.

It shows that in March 1956 Government sanctioned a loan of Rs. 50 lakhs to M/s. Lakshmi Ratan Engineering Works Ltd., Bombay, for setting up a factory for the manufacture of textile machinery and its parts in the State of Uttar Pradesh. The loan carried interest of 5 per cent per annum and was repayable in 10 yearly equated instalments of Rs. 6,79,899/- each commencing from the 28th March 1958. Against the five instalments of Rs. 6,79,899/- each due from 1958, only a sum of Rs. 13,13,490/- was paid during 1961-62. A total sum of Rs. 22,65,064/- on account of overdue instalments was outstanding on the 28th March 1962.

- (v) Ex. R. 217 is a copy of the order in appeal before the Foreign Exchange Regulation Appellate Board. The appeal was filed by Respondent No. 1 against the order of the Director of Enforcement holding that the Respondent No. 1 had contravened the provisions of section 4(1) and 4(3) of the Foreign Exchange Regulation Act, 1947, by maintaining and operating accounts in foreign currency in the branches of the Chartered Bank of India, Australia and China at Hong Kong, Osaka and Tokyo without the general or special permission of the Reserve Bank of India. The appeal was dismissed and the order of the Director of Enforcement for the penalty imposed was maintained.

248. From the above documents filed by the petitioner, it has been established that there was a decree for a sum of Rs. 17,56,227.94 nP. in favour of Life Insurance Corporation against Respondent No. 1. The decretal amount comprised of the sums of money deposited by the Empire of India Life Assurance Co., of which Respondent No. 1 was a Director from time to time, in the Discount Bank of India Ltd., of which also Respondent No. 1 was a Director. Execution proceedings for the recovery of the decretal amount against Respondent No. 1 had been started in the court of the District Judge, Kanpur and property attached. The State of Uttar Pradesh advanced a loan of Rs. 50 lakhs to the Respondent No. 1 in the year 1958 to Lakshmi Ratan Engineering Works Ltd., Bombay. In which Respondent No. 1 is one of the Directors. This amount is to be repaid by annual instalments. On 20th March 1962 a total sum of Rs. 22,55,064/- on account of over due five instalments was outstanding. It has been provided that Respondent No. 1 was fined for the breach of Foreign Exchange Regulations.

249. *Issue No. 28.*—Respondent No. 1 in para 28 of the recriminatory petition has alleged that the petitioner and his agents, workers and supporters with his knowledge and consent hired and procured bullock carts and other vehicles for conveyance of the electors of a number of villages to the Polling Stations and back to the said villages on the date of poll. The details and particulars about bullock cart owners, whose carts were hired and procured, the names of the agents and persons who hired these bullock carts and vehicles and the names of villages from which the voters were conveyed to the polling station are given in Annexure VIII.

The petitioner stated that no vehicles or conveyances were ever hired, procured or obtained for carrying voters to and from the polling stations in any part of the constituency either by him, his election agent or with their consent by any persons interested in furthering the prospects of the petitioner's election. The particulars given in Annexure VIII were denied.

250. Respondent No. 1 examined Swami Nath (R.W. 23), Dr. Mohd. Umar (R.W. 24), Gau Saran (R.W. 25), Salaroo (R.W. 26), Sushil Chandra (R.W. 27), Bhikiram (R.W. 28), Bachchoo Ram (R.W. 31), Sheo Prasad (R.W. 44), Ram Sagar (R.W. 45), Swarup Chand (R.W. 49), Ram Saran (R.W. 57).

Swami Nath (R.W. 23) says that he worked for the petitioner during the election and was posted at Kamrawa polling station. He further says that he was asked by the petitioner to get some bullock carts on hire for bringing voters to the polling booth. He employed three bullock carts for the said purpose and names Ranchhor, Ram Sagar and Ramphere as the owners of the said bullock carts. Names of the persons who hired the bullock carts have not been mentioned in Annexure VIII. Swami Nath must have been tutored subsequent to the filing of Annexure VIII to support the case of Respondent No. 1. Ramphere's name

also does not appear in Annexure VIII. Date and time of hiring also has not been mentioned by this witness.

In para 10 of his cross-examination he admits that at the time of the poll he was at Siraj Ahmed's camp. The bullock carts were coming up to the Swatantra Party camp which was by the side of Siraj Ahmad's camp. No worker or agent of any of the candidates made any objection in writing to the Presiding Officer of the polling booth about the conveyance of voters in bullock carts.

Name of this witness does not appear in Annexure VIII although he poses to be petitioner's worker. No reliance can be placed on his testimony.

251. Dr. Mohd. Umar (R.W. 24) says that he received money from the petitioner for engaging bullock carts to bring voters upto the polling booth. He himself used his cart for that purpose for which he took Rs. 5. Voters were brought from village Imilia upto Khargoopur Bazar.

In para 11 of his cross-examination he stated that mostly Muslim women and old Muslim voters were carried in his bullock cart, but he could not say how many trips were made. He further says that the cart used to halt at a distance of 15 or 20 paces from the camp of Siraj Ahmad, and the voters who came by this cart got the identification slips prepared in the camp of Siraj Ahmad.

It has been held that Siraj Ahmad was not set up by the petitioner (*vide* Issues 14, 15). He poses to be petitioner's worker during election but has now come to give evidence for the rival candidate. He is obviously telling lies that he hired bullock cart for carrying the voters of the petitioner. None of the voters alleged to have been taken in his cart have been examined to corroborate him. I disbelieve his evidence.

252. Gau Saran (R.W. 25) is a resident of Intiathok. He says that on the date of poll, he was at Aya polling station where he saw some bullock carts bringing voters from different places to the polling station for the petitioner. Out of these bullock carts one belonged to Kantidhar Shukla and the other to Riasat Khan, father of Dr. Siraj Ahmad.

Siraj Ahmad was himself a candidate and the bullock cart of Riasat Khan, if engaged at all, must have been for Siraj Ahmad. Kantidhar Shukla, the alleged owner of the other bullock cart has not been examined, to corroborate him.

I place no reliance on this witness. He posed to be a supporter of the Swatantra party and he has now come to give evidence for the rival candidate.

253. Salaru (R.W. 26) is a resident of Intiathok. He says that on the date of poll he went to Aya polling station and saw bullock cart of Riasat Khan bringing voters to Swatantra party camp from different places.

In his cross-examination he says that on the date of poll he visited polling stations Intiathok, Kalaina and Aya. In Intiathok polling station he was present from 12 noon to 2 P.M. on the date of poll. He was at Kalaina from 2.30 P.M. to 4.30 P.M. or 5 P.M. From Kalaina he went back to his house and then went to the polling station Aya, at about 3 P.M.

He maintains that when he reached Aya polling station the following day, the casting of votes was going on and he saw voters coming on bullock carts to the petitioner's camp. This is obviously false. He also poses as petitioner's worker and now appeared as Respondent No. 1's witness. His evidence is rejected as untrustworthy.

254. Sushil Chandra (R.W. 27) says that his father Ranchhor owns a bullock cart. On the date of poll at Kamrawa polling station his uncle Rampat acted as a polling agent for the petitioner and this bullock cart was hired that day for bringing voters from different places. He used to bring the voters in this cart and they used to get down near the camp of the petitioner at a distance of about 100 yards.

Name of hirer is not given in Annexure VIII. In his cross-examination he says that none of the workers of Congress, Jan Sangh or Hindu Mahasabha raised any objection to the voters being brought in bullock carts.

He says that mostly women voters were brought in his cart, but he could not give the names. He could not give the names of the male voters nor did he know whose voters they were.

No reliance can be placed on his evidence. It is difficult to believe that workers of other candidates could have kept quiet had the voters been brought in the bullock carts as alleged by this witness. Moreover, he himself does not know whose voters he brought.

255. Bhiki Ram (R.W. 28) is a resident of Nausahra. He says that his bullock cart was hired by the petitioner on the day of poll and he made about 10 to 20 trips for which he was paid by the petitioner.

In his cross-examination he says that Nausahra is 2 or 3 furlongs from Khargoopur Imilia. No one objected to the voters being brought in a cart. It is difficult to believe that the bullock cart will be hired for carrying the voters from Nausahra to Khargoopur Imilia for a distance of only 2 or 3 furlongs. He says that his bullock cart was hired 2 or 3 days before the date of election. This is in contradiction to what is alleged in para 24 of the recriminatory petition where it is stated that bullock carts were hired on the date of poll.

This witness is obviously telling lies. He is disbelieved.

256. Bachchoo Ram (R.W. 31) says that his bullock cart was engaged by the petitioner for Rs. 7 for bringing voters from the village Aya to Aya polling station. According to him, his bullock cart was engaged 5 or 6 days before the date of poll.

Respondent No. 1's allegation is that the bullock carts were hired on the date of poll. This witness is obviously telling lies. His name does not appear in Annexure VIII. He is a tutored witness. No reliance can be placed on his evidence.

257. Sheo Prasad (R.W. 44) has deposed that Padumnath who worked for the petitioner at Babhani Sarai polling station asked him to get two bullock carts on hire. He says that he hired the bullock carts of Chhedi and Kallu Dhobi who were paid Rs. 5 each. These bullock carts brought voters from villages Tendua, Chaukharua and Akbarpur upto Babhani Sarai polling station.

In his cross-examination he admits that Padumnath's house is at a distance of 1½ to 2 furlongs from Tendua. Padumnath knew both Chhedi and Kallu Dhobi. In view of the above admission, it is difficult to believe that Padumnath would ask him to engage the bullock carts of these two persons whom he himself knew so well. Padum Nath's name does not appear in Annexure VIII. I disbelieve the evidence of Sheo Prasad.

258. Ram Sagar (R.W. 45) says that his bullock cart was engaged by Tribeni Pandey of Khargoopur for the Swatantra party a day before the poll, but Respondent No. 1's allegation is that bullock carts were hired on the day of poll. In his cross-examination he says that Ramdin was his plough man who drove the cart for taking the voters. He admits that he did not go to Bhangaha polling station at all. He could not say what voters were brought in the cart and from what villages. This admission in his cross-examination is enough to discredit his testimony.

259. Swarup Chand (R.W. 49) is the brother of Sushil Chandra (R.W. 27). He says that his bullock cart was hired for Rs. 7. He does not say who hired the bullock cart.

In his cross-examination he says that 4 trips were made by the bullock carts at the polling station Kamrawa. Some of the trips were from Bhulai Dih and some from Rarianpurwa, Tiwaripurwa and Kamrawa. All these villages are at a distance of 3 furlongs from the polling station. Kamrawa village is only 1½ furlong from the polling station. It is difficult to believe that bullock carts will be hired to carry the voters for such a short distance.

He further says that workers of different candidates present at the polling station did not raise any objection to the voters being carried by bullock carts. The only reasonable inference is that no voters were brought in bullock carts from the villages named by this witness. He poses to be a worker of the petitioner but has come to depose against him.

I disbelieve his evidence.

259. Ram Saran (R.W. 57) says that he got the bullock cart of Nakshed hired for the purpose of bringing voters from village Narainpur. His own bullock cart was also used for that purpose. In his cross-examination he says that only two bullock carts one belonging to him and the other belonging to Nakshed plied for

bringing the voters at Khargoopur Imalla. He contradicts Dr. Mohd. Umar (R.W. 24) and Bhiki Ram (R.W. 28). His name does not appear in Annexure VIII. He poses to be a worker of the Swatantra Party, but has come forward to give evidence for the rival candidate.

I disbelieve his evidence.

Respondent No. 1 has failed to adduce cogent evidence to show that the petitioner or his agents hired bullock carts to carry voters to the polling station. The findings on this issue is in the negative.

260. Issues Nos. 29, 30 and 31.—Respondent No. 1 led no evidence in support of the allegations contained in these issues.

261. Issue No. 32.—In elaborating his arguments on this point of Law, the learned Advocate General posed four questions for considerations before the Tribunal, viz.;

- (i) Whether the R.O. had an option to accept or reject the ballot papers?
- (ii) If R.O. had an option, whether it was to be exercised in accordance with Rules?

OR

Had the R.O. the Additional Duty of finding out the true wishes and intention of the voter?

- (iii) If R.O. had the option, was that option to be exercised merely by looking at the Ballot Papers or would he take other evidence?
- (iv) Would the Tribunal record a finding for himself as to whether on evidence before him the ballot papers were intended for casting vote in favour of one candidate or the other?

OR

Whether the Tribunal is restricted to the finding which the R.O. could have arrived at on the evidence before him as the R.O. possibly could not have all the facility and evidence which are before the Tribunal?

To the first, second and third points the Advocate General replied that the intention as envisaged in the Rules and Law do not contemplate any enquiry by the R.O. If there be more than one mark on a Ballot Paper "R.M.V." the R.O. had no option but to reject it. He maintains that the intention of the voter was not necessary to be found out as it was not the intention of the Act and Rules that R.O. should hold an enquiry. He maintains—R.O. was to look at the Ballot Paper, find out the apparent error. Nothing more could be done by the R.O. This completely rules out the enquiry by the R.O. regarding tampering etc. In support of his argument the learned Advocate General has referred to Rule 56 and the Instructions to the R.O's page 57(K). Also 15 E.L.R. 219(220, 238).

262. On the fourth point the Advocate General contends that the Tribunal's jurisdiction is limited. If the R.O. could not make any enquiry the Tribunal could not do so. Tribunal's jurisdiction is only co-extensive with that of the R.O. The learned Advocate General further submitted that the finding of Mr. Justice Mathur in Writ Petition No. 2718 of 1962 to the effect that the R.O. was to find out the intention of the voter and then accept or reject the Ballot Paper is wrong. He wants to maintain it because of the ruling reported in 10 E.L.R. 216 (234, 235, 237, 241, 242).

The learned Advocate General further maintains that only that evidence is relevant for the purpose of the Tribunal, which could have been available to the R.O. all other evidence was inadmissible as the evidence which have been lead here was not available to the R.O. at the time of recounting, therefore, the Tribunal must consider only that evidence or materials which were before the R.O. on the basis of which he could have come to some conclusion.

263. The judgment of Hon'ble Mr. Justice Mathur dated 1st April, 1963 delivered in Misc. Writ No. 2718 of 1962 arising from an order of this very Tribunal dated 3rd September, 1962 is a complete answer to the first objection. The arguments advanced before Mr. Justice Mathur by the learned Advocate General were the same as are being advanced now before this Tribunal. After dealing with the various provisions of the Representation of People Act and the Rules made thereunder the Hon'ble Mr. Justice Mathur writes:—

"It shall be found that stress has been laid on the word 'vote' and not on the word 'mark' and the R.O. has to form an opinion as to the intention

of the elector. If on a perusal of the marking it is evident for whom the elector had intended to cast his vote, and had, in fact, cast his vote, that vote has to be taken into consideration and not any extraneous marking which may have been done by some other person surreptitiously or in the course of his official business..... Similarly, if there exist two marks on the ballot paper against more than one candidates and one of such marks appears to be the result of tampering, that mark can be disregarded and in the eye of law the vote was recorded against one candidate only against whose name the genuine mark exists".

The learned Judge refers to the second proviso to sub-rule (2) of Rule 56 and he says that this makes the above point still clearer. According to the learned Advocate General this ruling of Hon'ble Mr. Justice Mathur is wrong.

264. Before dealing with the merits of this point I will like to make it clear that the above judgment of Mr. Justice Mathur in Civil Misc. Writ No. 2718 of 1962 is binding on this Tribunal as well as the Hon'ble High Court of Allahabad itself.

In *Laxmi Narayan Vs. Balwant Singh and others* reported in 20 E.L.R. 76 (94, 95) their Lordships have held that—

"An order passed by the High Court in the exercise of its jurisdiction to issue Writs setting aside an interlocutory order of the Tribunal cannot be set aside by the High Court in appeal against the final order of the Election Tribunal".

Their Lordships further hold—

"This Court passed final orders with respect to the above matters and it was not open to the Election Tribunal after that, to consider the legality of the order dated 13th September, 1957 (the order of the High Court in Writ)".

In the light of the above judgment of the Hon'ble High Court it is not open to the learned Advocate General to challenge before this Tribunal the legality of the judgment of the Hon'ble Allahabad High Court passed in Civil Misc. Writ Petition No. 2718 of 1962 and it is also not open to this Tribunal to decide about the correctness or otherwise of the decision of the Hon'ble High Court and the said decision must be accepted by this Tribunal as final.

265. In the above view it was the duty of the Returning Officer to consider the intention of the voter in respect of the ballot papers which were originally accepted as valid for the Petitioner but were at the recount found to bear an additional mark in favour of some other candidate. This he could have done and should have done as there was sufficient clear evidence before him, as given below:—

- (i) these ballot papers were accepted by the counting clerks as valid without any challenge by the counting agents of any of the respondents.
- (ii) the counting clerks and supervisors in the discharge of their official duties must be presumed to have discharged their duty correctly.
- (iii) it was apparent before the Returning Officer that the second mark found in these ballot papers lacked in continuity and were mostly very faint in comparison to the bolder mark in the cage of Star.
- (iv) The Returning Officer should have become sceptic because this feature was found only in the cases of ballot papers originally counted in favour of the Petitioner and there was the common feature of the bolder mark being in the cage of the Star.
- (v) There was an obvious design in the feature as they were all pointing against the Petitioner only. This is further corroborated by the fact that ballot papers originally rejected as R.N.M. or R.M.B.A. were all found to bear one mark only in the cage of Respondent No. 1 at the recount.
- (vi) that these features were noticeable only in the case of two segments of which A. S. Misra was the Assistant Returning Officer. Even in this, in the case of the bundle of ballot papers which got mixed up with U.P. Assembly seat ballot papers no such feature was noticeable.
- (vii) The above features were sufficient to convince the Returning Officer about the tampering, will be clear from the evidence of the Deputy

Election Commissioner (P.W.3) who was present during the recount and who says:—

“On a closer watch I found that this was a case of tampering in that the second faint mark could not have been made simultaneously when the original mark was made” (para 3).

and therefore he asked the Returning Officer

“to keep an account of the number of ballot papers of both the categories and for this purpose a form was prescribed “vide Ex. P. 26 and Ex. P. 27”.

Copies of the telegram to the Chief Election Commissioner Ex. P. 30 made over to the Returning Officer at 12.45 p.m. on 11th March, 1962 and the letter to the Deputy Election Commissioner by the Petitioner Ex. P. 29 made over to the Deputy Election Commissioner on the forenoon of 11th March, 1962 and read by the Returning Officer are significant. Allegations of tampering have clearly been made in this.

In the light of the above points and specially in view of the judgment of Hon'ble Mr. Justice Mathur there was sufficient evidence before the Returning Officer on which he could and should have found the said ballot papers to be tampered and it was his duty to decide accordingly.

Apart from any thing else the said ballot papers and the evidence referred to are all before the Tribunal in the same measure as they were before the Returning Officer and the Tribunal is fully competent in coming to the conclusion that the said ballot papers were tampered with and proceed to—

- (a) accept as valid for the Petitioner the votes which were wrongfully rejected and should not have been rejected by the Returning Officer,
- (b) to reject the votes which were wrongfully accepted for the Respondent No. 1 and should not have been so accepted by the Returning Officer.

266. The fourth point advanced by the learned Advocate General is that the jurisdiction of the Tribunal is limited only to the evidence which were available to the Returning Officer. This is based on the ground that the power of the Tribunal is only co-extensive with that of the Returning Officer.

The learned Advocate General has based his whole argument on this point on the view taken by the Supreme Court reported in *Hari Vishnu Kamath Vs. Ahmad Ishaque and others*—10 E.L.R. 216. In the course of his arguments he stated that he was challenging the judgment of Mr. Justice Mathur in Writ No. 2718 of 1962 on the strength of the above decision of the Supreme Court.

The first point to note is that the said ruling of the Supreme Court is based on an interpretation of Rule 47(1) (c) read with Rule 47(4) of the *Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951*.

Rule 47(1) (c) runs as under:—

“A ballot paper contained in a ballot box shall be rejected—

If it bears any serial number or mark different from the serial numbers of marks of ballot papers authorised for use at the polling station or the polling booth at which the ballot box in which it was found was used”.

Rule 47(4) runs as under:—

“The decision of the R.O. as to the validity of a ballot paper contained in a ballot box or of a Postal Ballot paper or of a vote given on a Postal ballot paper shall be final subject to any decision to the contrary given by a Tribunal on the trial of an Election Petition calling in question the election”.

Rule 23 prescribes procedure before recording of votes. Rule 25 prescribes the manner of recording of votes after the receipt of ballot papers and Rule 28 provides that the ballot paper shall contain a serial number and such distinguishing mark as the Election Commission may decide.

A perusal of the above Rules would show that the manner of voting was wholly different from what it was in the 1962 Election. Whereas in 1952 election the ballot papers bearing serial numbers and the distinguishing marks of the Election

Commission had only to be put in by the voter into the Ballot box of the candidate of his choice. Each candidate had a separate box placed for receiving ballot papers in his favour. In the 1962 election separate ballot boxes were not provided for each candidate but there was only one ballot box for all the candidates. The voter was supplied with ballot paper which he was to mark by the Rubber Seal Stamp in the cage of the candidate of his choice.

Keeping in view the above difference it will be clear from a perusal of Rule 47 of the Rules in force in 1952 that no provision has been made therein regarding the markings of ballot paper by the voter and the manner of marking which might lead to their being rejected at the time of counting.

Rule 47(c) laid down as a mandatory provision that the ballot papers must bear a serial number and a mark prescribed by the Election Commission. So far as this is concerned there is and can be no question of the intention of the voter or probe into his intentions. If the serial number or the mark was not there the Returning Officer had to reject it and the Tribunal also had to reject it.

267. Rule 47(4) provided that the decision of the Returning Officer as to the validity of the ballot paper in a ballot box was final, subject only to the decision to the contrary by the Tribunal. From this it would be clear that according to this sub-rule the question was about the ballot paper, the Returning Officer's decision about its validity was final and the Tribunal was in the capacity of exercising an Appellate Jurisdiction over the decision of the Returning Officer. In 10 E.L.R. 216 their Lordships of the Supreme Court lay down that the provisions of Rule 47 of 1951 Rules were mandatory. Their Lordships further lay down that under Rule 47:—

“The R.O. has to automatically reject certain classes of votes for not being in conformity with the Rules. They are set out under Rule 47(1) (b) and (c). In other cases the rejection will depend on his decision whether the conditions for his acceptance have been satisfied.....

Rule 47(4) is important. It provides that the decision of R.O..... shall be final subject to any decision to the contrary given by a Tribunal

“Under this provision, the Tribunal is constituted a court of Appeal against the decision of the R.O. and as such its jurisdiction must be co-extensive with that of the R.O. and cannot extend further. If the R.O. had no power under rule 47 to accept a vote the Tribunal reviewing this decision under Rule 47(4) can have no such power”.

In the above position of law when it was argued in that case that the object of the Election Rules is to discover the intention of the voters, if an elector has shown a clear intention to vote for a particular candidate, that must be taken into account under section 100(ii)(c) even though the vote might be bad for non-compliance with the formalities, their Lordships held that when the law prescribes that the intention should be expressed in a particular manner, it can be taken into account only if it is so expressed.

268. The judgment of their Lordships only establish that the ballot papers under Rule 47 read with Rule 28 had to bear a serial number and the prescribed mark and there was no question of consideration of the intention of the voter in that respect. Their Lordships further hold that in view of the provisions of Rule 47(4) the Tribunal is constituted a Court of Appeal and as such its power is co-extensive with that of the R.O. in relation to Rule 47.

This judgment of their Lordships is dated 9th December, 1954.

In the Rules of 1956, Rule 57 corresponds to the Rule 47 of 1951, and Rules 57(d) and (e) correspond to Rule 47(c).

From a perusal of Rule 57 it will be seen that a proviso has been added as under:—

“Provided that where the Election Commission on being satisfied that any such defect as is mentioned in clause (d) or clause (e) ... a ballot paper shall not be rejected merely on the ground of such defect”.

It will also be seen that the provision contained in Rule 47(4) of 1951 Rules was eliminated in its entirety from Rule 57 of 1956 Rules.

It may safely be taken that the above amendments were brought about as a result of the judgment of their Lordships of the Supreme Court reported in 10 E.L.R. 216.

In 15 E.L.R. 219 their Lordships of the Madhya Pradesh High Court laid down:—

“Under the provisions of Rule 57(2) and Rule 27(2) of the R. P. Act 1951 a ballot paper which does not bear a distinguishing mark as directed by the Election Commission has to be rejected. The proviso to Rule 27(2) (e) will apply and save such ballot papers only if the Election Commission had validated such papers on a reference being made to it by the Returning Officer”.

This ruling nowhere lays down that the Tribunal is constituted a Court of Appeal over the decision of the Returning Officer or that the powers of the Tribunal are co-extensive with those of the Returning Officer.

Even so it appears that while framing the Rules in 1961 the Legislature has taken into consideration the ruling reported in 15 E.L.R. 219; and therefore I find that in Rule 56 of 1961 Rules (which corresponds) to Rule 57 of 1956 Rules, there is a material change in the first proviso which provides that where the Returning Officer is satisfied that any such defect as is mentioned in clause (g) or (h) has been caused by a mistake or failure on the part of a presiding officer or a Polling Officer, the ballot paper shall not be rejected merely on the ground of such defect.

By this proviso a duty is cast on the Returning Officer to satisfy himself about the causes of the mistake.

269. It is to be noted that for the Election to be held in 1962 the manner of voting also was materially changed vide Rules 22, 23, 25, 30, 38, 39, 40 of 1961 Rules. Therefore in Rule 56 new provisions viz. 56(2)(b)(c) and (d) were provided for the first time and while providing these sub rules a proviso too was added viz.—

“Provided further that a ballot paper shall not be rejected merely on the ground that the mark indicating the vote is in distinct or *made more than once, if the intention that the vote shall be for a particular candidate clearly appears from the way the paper is marked*”.

This proviso coming in sequence after the judgment of the Supreme Court reported in 10 E.L.R. 216 makes it obvious that the Legislature intended quite clearly that the Returning Officer has the duty to judge and find out the intention of the voter even in cases where a ballot paper is found to contain more than one mark and he could not reject them automatically as was ruled by the Supreme Court while dealing with Rule 47(c) of 1951 Rules. Instructions for Returning Officers page 57(k) as well as to (m), specially (m) (vii) which corresponds to the second proviso in Rule 56 makes it further clear.

So far as the effect of omission of Rule 47(4) of 1951 Rules from the corresponding provisions of 1956 and 1961 Rules is concerned, the judgment of their Lordships of the Supreme Court reported in 17 E.L.R. 181(189) *Veluswami Thevar Vs. Raja Naynmar & others*—A.I.R. 1959 S. C. 422 is quite clear and definite. The relevant portion of their Lordships decision is as under:—

“It was contended for the respondent that the proceedings before the Tribunal are really by way of Appeal against the decision of the R.O. and that, therefore, the scope of the enquiry in the Election Petition must be co-extensive with that before the R.O., and must be limited to the ground taken before him

We are unable to agree with this contention. The jurisdiction which a Tribunal exercises in hearing an Election Petition even when it raises a question under Section 100(1) (c) is not in the nature of an appeal against the decision of the R.O. An election petition is an original proceeding instituted by the presentation of a Petition u/s 81 of the Act.

All the parties have the right to adduce evidence and that is of the essence of an original proceeding as contrasted with a proceeding by way of Appeal. it is open to a party to put forward all grounds in support of or negation of the claim, subject only to such limitations as may, if found, in the Act”.

Proceedings further their Lordships of the Supreme Court mention that the Tribunal is not restricted to the materials placed before the R.O., and that all evidence bearing on that ground could be adduced before the Tribunal. Their Lordships while referring to 10 E.L.R. 216 have mentioned—

“Now the observations quoted above are made statdly with reference to Rule 47”.

From the above ruling it is amply clear that in view of the material changes in Rule 56 which corresponds to Rule 47 of 1951 Rules, the ruling reported in 10 E.L.R. 216 is no longer effective and it can have no force *vis-a-vis* the ruling reported in 17 E.L.R. 181(189) S.C.”.

270. In A.I.R. 1960 Supreme Court 368, it has been laid down as follows:—

“Courts and Tribunals are constituted to do justice between the parties within the confines of statutory limitations and undue emphasis on technicalities or enlarging their scope would cramp their powers diminish their effectiveness and defeat the very purpose for which they are constituted”.

Their Lordships further say—

“.....even if there is a proper acceptance it is open to the petitioner to question the validity of the election u/s 100(1) (d) (iv) on other grounds.....”.

In A.I.R. 1960 Patna 371 (373), following the decision in 17 E.L.R. 181 their Lordships of the Patna High Court held:—

“The Principle decided in the case of 1959 S. C. 422 (17 E. L. R. 181) is applicable to the facts of the instant case. I would therefore hold that additional grounds of attack could be taken before the Tribunal in regard to the validity of the nomination of the appellant”.

Their Lordships followed 17 E. L. R. 181 and not 10 E. L. R. 216.

In *Bhim Sen Vs. Chhatar Singh & others*—(15 E. L. R. 175 at 181) their Lordships of the Allahabad High Court overruled the contention that the countings and recountings done by the Returning Officer were final and the Election Tribunal had no jurisdiction to go into the matter and to come to a conclusion that the appellant had received a lesser number of votes than he was declared to have received by the Returning Officer. Referring to Rule 64 of 1956 Rules (corresponding to Rule 63 of 1961 Rules) their Lordships of the Allahabad High Court decide that this Rule has no application to the proceedings before the Election Tribunals and it is confined in its operation to proceedings before the Returning Officer. Their Lordships further say that—

“Reference was also made to old Rule 47 which said that the decision of the returning officer, after a recounting, would be final but was subject to the decision by the Election Tribunal. The argument is that the last words of the old rule having been omitted from rule 64, the decision of the returning officer is no longer subject to the decision of the Election Tribunal. But along with those words the word “final” has also been omitted in rule 64, and rule 64 nowhere says that the recounting done by the returning officer shall be final. Besides, one of the grounds on which an election petition can be allowed and which is mentioned in section 100(1)(d)(iii), is the improper reception of any vote which is void. It is thus the duty of the Election Tribunal to determine whether there had been any improper reception, refusal or rejection or reception of any vote which was void. The Tribunal has to see whether the votes cast in favour of a particular candidate were valid or not. It could, therefore, go into the question as to how many void votes had been counted in favour of the respondent.”

Therefore, in the light of the latest Supreme Court judgment on the point, I hold

- (i) that the Tribunal is not constituted as a Court of Appeal over the decision of the Returning Officer,
- (ii) its powers are not co-extensive with that of the Returning Officer. In other words, the scope of the Tribunal's enquiry is not restricted to the evidence which were or could be available to the Returning Officer.

271. *Issues Nos. 12 and 13.*

In view of the findings recorded above the Election Petition filed by Shri Narayan Dandekar is allowed. The election of the returned candidate Shri Ram Ratan Gupta Respondent No. 1 to the House of People (LOK SABHA) from 34—Gonda Parliamentary Constituency is declared void and is set aside.

Shri Narayan Dandekar is declared to have been duly elected to the House of People (LOK SABHA) from 34—Gonda Parliamentary Constituency, District Gonda in the State of Uttar Pradesh.

The Recriminatory Petition filed by Respondent No. 1 under section 97 of Representation of the People Act is dismissed.

Respondent No. 1 shall bear his own costs as well as the costs of the Petitioner throughout amounting to Rs. 3,802.79 Paise detailed below including counsel's fee. I fix Rs. 1,000 as counsel's fee for the Petitioner.

	Rs.
Applications.	53.75
T.A. and D.A. of witnesses.	1,001.34
Experts Fee including photograph charges.	612.00
Transportation charges of Boxes containing Ballot Papers including its safe custody charges with the State Bank of India, Allahabad.	966.00
Charges of certified copies of documents filed.	94.70
Charges on account of local inspection.	75.00
Counsel's fee.	1,000.00
TOTAL	3,802.79 P.

Respondents 2 to 4 shall bear their own costs if any.

August 29, 1964.

Sd./ B. K. CHOUDHURI.

[No. 82/339/62.]

By Order,

PRAKASH NARAIN, Secy.

